CRIMINAL

Pleadings; Evidence & Practice

IN BRITISH INDIA.

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Pleadings, Evidence and Practice

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BEING

A HANDBOOK OF THE SYNOPSIS OF THE PENAL LAW, THE CRIMINAL PROCEDURE, THE LAW OF EVIDENCE AND THE PRACTICE IN THE CRIMINAL COURTS WITH FORMS.

BY

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Preface to the Third Edition.

This handbook has been thoroughly revised and enlarged to a large extent Sealdah Gang case which formerly occupied a large portion of the book has been curtailed and other important trials have been incorporated in it I have tried my utmost to make this book as much popular amongst the junior practitioners as a book of this kind would require and I shall be glad to know how far I have succeeded in my attempt

BAR ASSOCIATION
H GH COURT
Calcutta 1st January 1936

K C CHAKRABARTI

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ABBREVIATIONS.

IMPORTANT

App Cas or A C—	Appeal Cases
B & C—	Barnewell and Cresswell s Reports King s Bench
B H C R	Bombay High Court Reports
B L R	Bengal Law Reports
Bom—	Indian Law Reports Bombay Series
Bom L R—	Bombay Law Reports
C—	Chapter
C C—	Criminal Cases
Cal—	Indian Law Reports Calcutta Series
C L J—	Calcutta Law Journal
Cl & F—	Clarke and Finnelly s Reports House of Lords
C and P—	Craig and Philip s Reports Chancery
Cr	Criminal
Cr P C—	Criminal Procedure Code
C W N—	Calcutta Weekly Notes
Dow and Cl—	Dow and Clark s Reports House of Lords
E and B—	Ellis and Blackburn s Reports Queen s Bench
F B—	Full Bench
F and F—	Foster and Finalson s Reports Nisi Prius
I A—	Indian Appeals
I L R—	Indian Law Reports
Ir C L R—	Irish Criminal Law Reports
Ir L R—	Irish Law Reports
K B—	King s Bench
L J—	Law Journal
L R—	Law Reports
L T	Law Times Reports
Mad L J—	Madras Law Journal
Mad—	*Indian Law Reports Madras Series*
N L R—	Nagpur Law Reports
P C—	Privy Council

Pat L J.—	Patna Law Journal.
P. R —	Punjab Record.
Q B —	Queen s Bench
S. C —	Same Case.
T. L R —	The Times Law Reports.
W. R —	Weekly Reporter.

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CRIMINAL PLEADINGS, EVIDENCE AND PRACTICE

BOOK I

INTRODUCTORY

CHAPTER I

(A) CRIMINOLOGY

Criminology is the scientific study of crime. It is both subjective and objective. The latter is treated as Criminal law and Jurisprudence and it is the former aspect that is the subject of special study in Criminology.

Crime is a punishable act. If omission to do an act be criminal, does the word 'act' include such omission? Primarily Bentham and Austin and Dr Mercier of the modern age gave their answer in the affirmative. Their opinion is that crime is affirmative. Their opinion is that crime is a voluntary act and since the act of willing is present in both bodily movements and arrests or suppressions thereof, the term 'act' need not be confined to movement alone. Wilfully to refrain from acting is to act. But this view is rejected by Dr Stroud as repugnant to commonsense on the ground that an omission is an artificial conception and does not indicate an event. Crime on the whole ought to be defined as an act punishable by law. It is an act which must harm or be regarded as harming society directly or indirectly. Hence crime is punishable by State.

It should be borne in mind that crime to a great extent differs from age to age and from place to place according to the intellectual advance of diverse social groups. For instance polyandry was a common feature of primitive society and we hear of the custom among some of the ancient races of the husband tolerating adultery with his childless wife for the sake of issue.

It should also be noted as to what is the distinction between crime, vice and sin. Prostitution, for instance, is immoral and sinful but not criminal, but if the State penalises the same it will become criminal as well.

The next thing to be noted is the artificial distinction of 'normal' and 'abnormal' introduced into criminology. The term 'normal' is used in

various senses (1) usual (2) general (3) natural etc the other term indicating the contrary

Raffaello Garofalo in his Criminology propounded his theory of natural and artificial crimes He looked upon criminality as the result of moral anomaly due to ethical degeneration through retrogressive selection

The causes of crime are as follows —

(1) Causes in the nature of agent comprise psychological and organic causes for crime proceeds from man in respect of its agency either the psychological part of him alone or his whole organism may be regarded

(2) Causes which are auxiliary include organic and physical factors of criminality Here the organic causes mentioned in (1) have been excluded as far as may be causes which are treated here do not originate any criminal tendency but serve to transmit aggravate or develop it

(3) Occasional causes are those which present opportunities or external facilities for the commission of crimes They may be physical or social

(4) Causes social and economical are in the nature of those that prepare the ground for criminality

Although the remark of overlapping applies to several causes they should be separately studied

It is important to note that prisons are colleges of crime and the magistrates are responsible for making jailbirds of young offenders I quote the following extract from John Bull to verify the last observation —

A young son of respectable parents stood charged at a Midland police court recently with the theft of a pair of shoes

He admitted the offence expressing sorrow for what he had done and promising that nothing of the kind should occur again

His mother added her own simple eloquence to her son s pleading He had always been a good boy at home she said but this police-court charge had grieved and crushed her If only the magistrates would forgive him this one lapse she would do all in a mother s power to keep him in the right path for the future

Or, if somebody must go to prison she would willingly go in the place of her boy

The Chairman of the Bench asked the police what they knew about the youthful prisoner The local superintendent said that up till now he had been a decent lad but lately he had been keeping bad company and out of bravado more than anything else, he had stolen the shoes

There was no previous conviction against him There was no solicitor to speak for the young man to emphasise his previous good character to plead that he might be bound over under the Probation of Offenders Act

The magistrates hobnobbed together for a few minutes Then the Chairman announced their decision

The boy was to go to prison for three months

While the mother's sobs echoed through the Court, this lad was led away to jail

We say without hesitation that this was a brutal and stupid sentence In the pages of John Bull it has always been contended that, save in *the most exceptional circumstances no youth or girl should ever be sent* to prison for a first offence

FIRST OFFENDERS

Not till all other attempts at reformation have failed should any bench of magistrates be allowed to send to the squalor and shame of the common jail young offenders

It was to prevent outrages of this sort that the Probation of Offenders Act was passed in England The plain intention of Parliament was that, wherever possible first offenders should be given a second chance, that they should be handed over to probation officers usually the police-court missionaries for care and supervision and helped in every possible way to become honest self respecting citizens

This humane measure has been in existence for nearly 30 years Yet some magistrates obstinately refuse to use it In more than 100 petty sessional divisions no probation officer has ever been appointed

The backwoodmen of the Bench prefer the old fashioned methods of handling young criminals the birch rod the reformatory school and the 'Black Maria

If the offenders are too old to be whipped or shut up in an institution then give them a sharp taste of prison That will 'larn' them to be criminals

Unfortunately that is exactly what it very often does Contact with older criminals contaminates and corrupts juvenile offenders

This point was emphasised the other day by Mr Cecil Whiteley K C, the Common Serjeant of London in an address to the Discharged Prisoners' Aid Society Some Benches think it right to send young girls to prison, but we are simply making criminals of them ' he said

Every year the Prison Commissioners furnish a return of the number of young people between the ages of 16 and 21 awarded prison sentences In the last official year there were 125 girls and 2,633 boys

Of the total of 2,751 young people roughly one-third 850 boys and 75 girls were first offenders

Their offences were nearly all of a minor character There were only 11 cases of dangerous or violent crime

The bulk of these first offenders had been convicted of petty thefts.

One has only to keep an eye on the newspapers to see what is constar happening

Here are a few cases selected at random A girl cashier of twenty charged with pilfering money from her employers, total defalcations less than £5 Hitherto, a perfectly good character, nothing whatever known against her

The Bench say she must be "made an example of Four months hard labour

A maidservant aged eighteen given £2 by her mistress to settle bills at certain shops disappeared with the money Traced by the police she confessed that she had spent it on a frock

Five years in same employment with no complaint Police say nothing known Appeal to place the girl on probation rejected one month's imprisonment

A nineteen year old milk roundsman, charged by his employers with embezzlement Total sum involved £12 Pleads that he owed money to a hire-purchase firm who were pressing him for immediate payment. Married with one baby Feared loss of his home Solemnly promises never to offend again if given a second chance Magistrate deaf to his appeal Three months jail

The figures of the Prison Commissioners take no account of young people in prison on remand or of those committed for non payment of fines The inclusion of these would swell the total enormously

On an average some 400 young persons a year go to prison for non payment of fines This is a cruel uncivilised procedure It punishes not crime but poverty

All fines should be payable by instalments according to the person's means

AS SPECIAL PRISONS

In the provinces there are no special prisons for this class of prisoner They are herded with hardened felons in the country jails

The most terrible part of this shocking evil is that instead of diminishing the number of young people sent to prison is increasing

The latest figures are 2 653 boys and 128 girls In 1925 there were only 1 500 boys and 93 girls

The number of boys under twenty-one sent to prison nearly doubled in ten years and the number of girls increased by over 25 per cent

These astounding figures strikingly confirm the prophecy of Mr Justice Greaves Lord who before his elevation to the Bench while Recorder of Manchester said "If magistrates will persist in sending boys to prison we shall have no diminution of juvenile crime"

Only the other day a boy was given two months' imprisonment for stealing a bicycle and anther three months for smashing a window.

Both lads were first offenders.

It ought not to be in the power of Justices of the Peace to send young men and women to prison for a first offence

On the wise treatment of a first offender his whole future life may depend

An eminent judge warning the Magistrates Association to be careful with young offenders described prisons as 'colleges of crime'

No boy or girl should go to jail until Probation Act has been tried and has failed

(B) THE PENAL LAW.

The primary duty of the Government is to maintain law and order, preventing and punishing all injuries to itself and disobedience to law which it has promulgated for the common good of its subjects The law by which a Government discharges its function as the guardian of the order is called the Penal Law It enumerates all acts and omissions which when infringed becomes punishable and also mentions the punishment for each act and omission The substantive penal law consists of two parts general and particular The more general part deals with such topics as the following definitions punishments, General Exceptions and Abetment The special part contains a classification of criminal acts and specific provisions with regard to the penal consequences of each

In this country the Indian Penal Code is the principal Code on the substantive penal law The general part of the Indian Penal Code consists of the following sections —

INTRODUCTION AND GENERAL EXPLANATION

(i) Section 53 provides that there are six classes of punishments, viz

First —Death

Second —Transportation

Thirdly —Penal Servitude,

Fourthly —Imprisonment, which is of two descriptions, namely —

(1) Rigorous that is with hard labour,

(2) Simple,

Fifthly —Forfeiture of property,

Sixthly —Fine

In Introduction S 2 provides punishment of offences committed within the territories vested in the Sovereign of England by the Statute 21 and 22 Victoria chapter 106.

S 3 provides for punishment of offences committed beyond but which by law may be tried within the territories

Nothing is an offence which is done in the exercise of the right of private defence

(iii) Sections 107 120 deal with abetment

Abetment—A person abets the doing of a thing who—

First—Instigates any person to do that thing, or

Secondly—Engages with one or more other person or persons in any conspiracy for the doing of that thing if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing or

Thirdly—Intentionally aids by any act or illegal omission the doing of that thing

With reference to the special part of the Indian Penal Law the criminal acts may be in the first place distinguished between the offences committed directly against the State and offences the mischief of which is primarily directed against particular individuals The State is injured by —

1 Waging war against the Sovereign (S 121 I P C),

2 Collecting men arms or ammunition with intention of waging war against the Sovereign (S 122 I P C)

3 Concealing with intent to facilitate design to wage war (S 123 I P C)

4 Assaulting Governor General Governor a member of the Council of the Governor General of India or of the Council of Governor of any Presidency with intent to compel or restrain the exercise of any lawful power (S 124 I P C)

5 Sedition (S 124A I P C)

6 Waging war against any Asiatic Power in alliance with the State (S 125 I P C)

7 Receiving property taken by war or depredation (S 127, I P C)

8 Public servant negligently suffering such prisoner to escape (S 129 I P C)

9 Harbouring deserter from the Army or Navy (S 136 I P C)

10 Deserter concealed on board the merchant vessel through negligence of master (S 137 I P C)

11 Wearing garb or carrying token used by the soldiers (S 140 I P C)

12 Being member of an unlawful assembly (S 142 I P C)

13 Rioting (S 146, I P C)

14 *Promoting enmity between classes* (S 153A I P C)

15 Affray (S 159 I P C)

16 Public servant taking gratification other than legal remuneration in respect of an official act (S 162 I P C)

17 Public servant disobeying law with intent to cause injury to any person (S 166 I P C)

18. Public servant unlawfully engaging in trade (S 168 I P C)
19. Personating a public servant (S 170 I P C)
20. Bribery at elections. (S 171 B I P C)
21. Undue influence at elections (S 171 C, I P C)
22. Personating at elections (S 171D, I P C)
23. False statement in connection with elections (S 171 G, I P C)
24. Contempt of the lawful authority of Public servants (Chapter X, I P C)
25. Giving false evidences (Chapter XI I P C)
26. Offences against the Public Justice (Chapter XI, I P C)
27. Offences relating to coin and Government stamps (Chapter XII, I P C)
28. Offences relating to weights and measures (Chapter XIII I P C
29. Offences Affecting the Public Health Safety, Convenience Decency and Moral Chapter XIV I P C)
30. Offences relating to Currency notes and Bank notes (Ss 489A to 489 D I P C)

Many criminal acts affecting primarily individuals are also so harmful to society as to be punished by it as crimes They may be classified under the following heads —

(1) Offences affecting life (Ss 299 to 311 I P C)
(2) Offences of causing of Miscarriage of Injuries to unborn Children, of Exposure of infants and of the concealment of Births (Ss 312 to 318, I P C)
(3) Hurt (Ss 319 to 338 I P C)
(4) Wrongful restraint and wrongful confinement (Ss 339 to 348 I P C)
(5) Criminal force and Assault (Ss 349 to 358 I P C)
(6) Kidnapping Abduction, Slavery and Forced Labour (Ss 359 to 374 I P C)
(7) Rape (Ss 375 to 376, I P C)
(8) Unnatural offence (S 377 I P C)
(9) Theft (Ss 378 to 382, I P C)
(10) Extortion (Ss 383 to 389, I P C)
(11) Robbery and Dacoity (Ss 390 to 402 I P C)
(12) Criminal Misappropriation of Property (Ss 403 to 404 I P C)
(13) Criminal Breach of Trust (Ss 405 to 409 I P C)
(14) Receiving of stolen property (Ss 410 to 414 I P C)
(15) Cheating (Ss 415 to 420 I P C)
(16) Fraudulent Deeds and Dispositions of Property (Ss 421 to 424 I P C)
(17) Mischief (Ss 425 to 440 I P C)
(18) Criminal Trespass (Ss 441 to 462, I P C)

(19) Offences relating to Documents and to Trade or Property marks (Chap XVIII I P C)

(21) Criminal Breach of contracts of service (Chap XIX I P C)

(22) Offences relating to Religion (Chap XV I P C)

(22) Offences relating to Marriage (Chap XX I P C)

(23) Defamation (Chap XXI I P C)

(24) Criminal Intimidation Insult and Annoyance (Chap XXII I P C)

The above are the offences dealt with in the Indian Penal Code in its several chapters

Besides the Indian Penal Code there are special and local laws under which one can be prosecuted for the infringement thereof

A special law is applicable to a particular subject and a local law is a law applicable only to a particular part of British India The following are some of the important special and local laws with reference to the subject under discussion —

Arms Act—Act XV of 1878

Arms and Explosives Act—Act XXI of 1932 B C

Assam Criminal Law Amendment Act—Act XXVII of 1934

Bengal Criminal Law Amendment Act—Act VIII of 1932 (B C) Act IV of 1932

Bengal Municipal Act—Act III of 1884 (Bengal)

Bengal Opium Smoking Act—Act X of 1932 B C

Bengal Suppression of Terrorist outrages Act—Act XXIV of 1932—Act XII of 1932 B C —Act XIX of 1932 B C

Births Deaths and Marriages Registration Act—VI of 1886

Calcutta Municipal Act—Bengal Act III of 1923

Calcutta Police Act—Bengal Act IV of 1866

Calcutta Police (Suburban) Act—Bengal Act II of 1866

Cattle Trespass Act—Act I of 1871

Children Act—Bengal Act II of 1922

Criminal Tribes Act—Act VI of 1924

Destructive Insects and Pests Act—Act II of 1914

Dramatic Performance Act—Act XIX of 1876

Elections offences and Inquiries Act—Act XXXIX of 1920

Epidemic Diseases Act—Act III of 1891

European Deserters Act—Act XI of 1836

European Vagrancy Act—Act IX of 1874

Excise Act—Act XII of 1896

Factories Act—Act XII of 1911

Fisheries Act—Act IV of 1897

Glanders and Farcy Act—Act XIII of 1899

Hackney Carriage Act—XIV of 1917

Immoral Traffic Act—Bengal Act XIII of 1933

Measures of Length Act—Act II of 1889
Metal Tokens Act—Act I of 1890
Mines Act—Act IV of 1923
Motor Vehicles Act—Act VIII of 1914
Obstructions in Fairways Act—Act XVI of 1881
Official Secrets Act—XIX of 1923
Opium Acts—Acts XIII of 1857 and I of 1878
Passport Act—Act XXXIV of 1920
Poisons Act—Act XII of 1919
Police Incitement to Disaffection Act—Act XXII of 1922
Press and Registration of Books Act—Act XXV of 1867
Press (Emergency Powers) Act—Act XXIII of 1931
Prevention of Cruelty to Animals Act—Act XI of 1890
Prevention of Dourine Act—Act V of 1910
Prevention of Seditious Meetings Act—Act X of 1911
Provincial Criminal Law Supplementing Act—Act IX of 1933
Prisoners Act—Act III of 1910
Public Gambling Act—Act III of 1897
Reformatory Schools Act—Act III of 1867
Salt Act—Act XII of 1882
Sarais Act—Act XXII of 1867
Stage Carriages Act—XVI of 1861
Vaccination Act—Act XIII of 1880
Weights and measures Capacity Act—Act XXXI of 1871
Wild Birds and Animals Protection Act—Act VIII of 1912
Workmen's Compensation Act—Act VIII of 1923

Before closing this Chapter one thing more should be stated here. Although the infringement of local laws is questioned in criminal courts—does such an infringement come within the purview of the criminal courts? Take for instance the infringement of Municipal laws. In several cases it has been held that the Criminal Procedure Code is applicable to prosecution under the Calcutta Municipal Act. See the cases reported in 30 C W N 808 S C 43 C L J 369, also in 43 C L J 231 and in 9 C W N 18. It has also been held that a Municipal Magistrate in Calcutta is a Presidency Magistrate and so the Criminal Procedure Code will apply to the proceedings before him in all its details. See the case reported in 29 C W N 898. In connection with the demolition of unauthorised structures the matter came before the Calcutta High Court in a very recent case. It was held there that the erection of an unauthorised structure is not an offence within the purview of the criminal courts. So long as there is no disobedience by a party to the order of demolition passed by the Magistrate he commits no offence. The Calcutta Municipal Act invests Municipal Magistrates with power to deal with certain proceedings under the Act which are not criminal proceedings. 31 C W N 506

(C) GENERAL PRINCIPLES OF CRIMINAL LAW

A Criminal Court has no jurisdiction over certain persons, e g ,

(a) *His Majesty the King*, on the principle that a king can do no wrong he cannot be prosecuted in his own Courts

(b) *Foreign kings* on the same principle as the king of a particular country is immune from criminal prosecutions in his own court The sovereign princes of other countries are not only immune from their own courts but also from the Courts of other princes

(c) *Ambassadors* The representatives of the sovereign princes are immune from Criminal prosecutions, on the principle that their princes are so immune

(d) *Alien enemies* Aliens who in a hostile manner invade the kingdom whether their king was at war or peace with British and whether they come by themselves or in company with English traitors cannot be punished as traitors but shall be dealt with by martial law

(e) *Foreign Army* When any army is in a foreign State it is immune from Criminal prosecutions

(f) *War Ships* They constitute a part of the Military force of her nation yet under the immediate and direct command of her sovereign are employed by them in national objects They have many and powerful motives for preventing those objects from being defeated by the interference of a foreign state Such interference cannot take place without affecting their power and dignity The implied license therefore under which such vessel enters a friendly port may reasonably be construed and it seems to the Court ought to be construed as containing an exemption from the jurisdiction of the Criminal Courts

(g) *Corporation* A natural person is amenable to Criminal prosecutions but a juridical person is not

(h) *Construction of Criminal Law*, All penal statutes are to be construed strictly that is to say, the Court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip that there has been a *causus omissus* that the thing is so clearly within the mischief that it must have been intended to be included and would have been included if thought of On the other hand the person charged has a right to say that the thing charged although within the words is not within the spirit of enactment But where the thing is brought within the words and within the spirit there a penal enactment is to be construed like any other instrument, according to the fair common sense meaning of the language used and the Court

is not to find or make any doubt or any ambiguity in the language of a penal statute where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument.

HONEST BELIEF

Where a person in the honest belief that it was his property takes a pigeon it does not amount to larceny nor is it an offence falling under section 23 of the Larceny Act—

> [Sec. 23, Larceny Act: Whosoever shall unlawfully and wilfully take any house dove or pigeon under such circumstances as shall not amount to larceny at common law, shall on conviction pay over and above the value any sum exceeding two pounds]

as there is no guilty mind to constitute such an offence. FARLEY v. WELCH (1931) 1 K. B. 588.

CHAPTER II

THE CRIMINAL PROCEDURE

The Criminal Procedure is the body of rules whereby the machinery of the courts is set in motion for the punishment of offenders In this country the Code of Criminal Procedure (Act V of 1898) consists of nine parts of which constitution and Powers of Criminal courts Prevention of offences Information to the police and their powers to investigate proceedings in prosecutions in ordinary cases and the trial of serious crimes are important

Part I preliminary consists of definitions and the scope of the code in trial of offences under the Indian Penal Code as well as under other laws

Part II deals with constitution and powers of criminal courts and officers This part is subdivided into two Chapters viz Chapters II and III Chapter II deals with the constitution of criminal courts and officers whereas Chapter III deals with powers of courts Chapter II is again subdivided into five heads The first topic is the classes of criminal courts (S 6)

There are five classes of criminal courts in British India namely —

I Courts of Session

II of Presidency Magistrates

III of Magistrates of the first class

IV of Magistrates of the second class

V of Magistrates of the third class

The High Court and the Privy Council are not placed in category of courts in as much as they are not established by the Code of Criminal Procedure With regard to the Privy Council it should be remembered that the rule has been repeatedly laid down and has been invariably followed that His Majesty will not review or interfere with the course of proceedings unless it is shown that by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise substantial and grave injustice has been done *In re Dillet* L R 12 A C 459 , *Arnold v The King Emperor* L R 41 I A 119

The next topic is that of territorial divisions It must be borne in mind that each Presidency town should be considered a separate district where the Police and the Presidency Magistrate are governed by a law relating to the procedure which is different in many respects from that which governs the Police and the Magistracy in Mufassil

Every Province (excluding the Presidency towns) shall be a sessions division or shall consist of sessions divisions and every sessions division shall be a district or consist of districts The Local Government may divide any district outside the Presidency towns into subdivisions or make any portion of any such district a subdivision

The next topic is the courts and officers outside Presidency towns

The Local Government is empowered to establish a Court of Sessions for every sessions for every sessions division and appoint a judge of such court The Local Government may also appoint Additional Sessions Judges and Assistant Sessions Judges

In every district outside the Presidency towns the Local Government is empowered to appoint a Magistrate of the first class who is called the District Magistrate The Local Government may also appoint any magistrate of the first class to be an Additional District Magistrate The local Government may appoint as many persons as it thinks fit besides the District Magistrate to be magistrates of the first second or third class

The Local Government may place any magistrate of the first or second class in charge of a subdivision Such magistrates are called Subdivisional Magistrates

The Local Government may confer upon any person all or any of the powers conferred or conferable on a Magistrate of the first second or third class in respect to particular cases or to a particular class of cases Such Magistrates are called Special Magistrates

The Local Government may direct any two or more magistrates in any place outside the Presidency Towns to sit together as Bench and may by order invest such Bench with any of the powers conferred or conferable on a Magistrate of the first second or third class

All magistrates other than the District Magistrate of the District are subordinate to the District Magistrate of the District within which they exercise their powers as such

All Assistant Sessions Judges and Additional Sessions Judges are subordinate to the Sessions Judge of the District within which they exercise their powers

But the Magistrates are not subordinate to the Sessions Judges except to the powers of revision and appeals

The next topic is the courts in the Presidency Towns In Presidency Towns the Local Government is empowered to appoint one Chief Presidency Magistrate and some Presidency Magistrates The Local Government may also appoint an Additional Chief Presidency Magistrate

Every Presidency Magistrate shall exercise jurisdiction in all places within the Presidency Town for which he is appointed and within the

limit of the part of such town and of any navigable river or channel leading thereto

The next topic is that of the Justices of the Peace

The next topic is the suspension and removal of all Judges of criminal courts

Chapter III deals with powers of courts

It is subdivided into four heads

The first topic is the description of offences cognizable by each court

Any offence under the Indian Penal Code may be tried—

(a) by the High Court or

(b) by the Court of Sessions or

(c) by any other court by which such offence is shown in the eighth column of second schedule of the Code of Criminal Procedure to be triable

S 29
Cr P C

Any offence under any of the law shall when any court is mentioned in this behalf in such law, be tried by such court

When no court is mentioned it may be tried by High Court or by any court constituted under the Code of Criminal Procedure by which such offence is shown in the eighth column of the second schedule of the Code to be triable

S 29 A
Cr P C

No Magistrate of the second or third class shall inquire into or try any offence which is punishable otherwise than with fine not exceeding fifty rupees where the accused is an European British subject who claims to be tried as such

S 29 B
Cr P C

Any offence other than one punishable with death or transportation for life committed by any person who at the date when he appears or is brought before the court is under the age of fifteen years may be tried by a District Magistrate or a Chief Presidency Magistrate or by any Magistrate specially empowered by the Local Government to exercise the powers conferred by the Local Government to exercise the powers conferred by the Reformatory Schools Act 1897

The second topic is the sentences which may be passed by courts of various classes

S 31
Cr P C

A High Court may pass any sentence authorized by law

A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law, but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court An Assistant Sessions Judge may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years

S. 32 Cr P C. The Courts of Magistrates may pass the following sentences, namely :—

Courts of Presidency Magistrates and of Magistrates of the first class	Imprisonment for a term not exceeding two years, including such solitary confinement as is authorized by law. Fine not exceeding one thousand rupees, Whipping
Courts of Magistrates of the second class	Imprisonment for a term not exceeding six months including such solitary confinement as is authorized by law. Fine not exceeding two hundred rupees.
Courts of Magistrates of the third class	Imprisonment for a term not exceeding one month Fine not exceeding fifty rupees

The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass

The Court of any Magistrate may award such terms of imprisonment in default of payment of fine as is authorized by law in case of such default,

S. 33 Cr P C Provided that the term is not in excess of the Magistrate's powers and that in any case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence the period of imprisonment awarded in default of payment of the fine shall not exceed one fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine

The imprisonment awarded in default may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate

Provided always that no Court of Sessions shall pass on any European

S. 34 A Cr. P. C. British Subject any sentence other than a sentence of death, penal servitude or imprisonment with or without fine, and that no district Magistrate or other Magistrate of the first class shall pass on any European British Subject any sentence other than imprisonment which may extend to two years, or fine which may extend to one thousand rupees, or both

When a person is convicted at one trial of two or more offences the Court may sentence him for such offences to the several punishments prescribed therefor which such court is competent to inflict, such punishments when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently

S 35 Cr P C

In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court Provided that in no case shall such person be sentenced to imprisonment for a longer period than fourteen years, and that if the case is tried the aggregate punishment shall not exceed twice the amount of imprisonment which he is in the exercise of his ordinary jurisdiction competent to inflict

The third topic deals with ordinary and additional powers of Magistrates

The fourth topic deals with confinement continuance and cancellation of powers

Part III deals with General Provisions It consists of chapters 4 to 7

The chapter IV deals with aid and information to the Magistrates the Police and Persons making arrests

The chapter V deals with arrest, escape and re taking of accused persons

The chapter VI deals with processes to compel appearance

The Chapter VII deals with processes to compel the production of Documents and other movable property, and for the discovery of persons wrongfully confined

This Chapter is subdivided into five parts A B C D and E

The part B refers to search warrants

Where any court has reason to believe that a person to whom a summons or requisition to produce document or other thing has been or might be addressed will not or would not produce the document or thing as required by such summons or requisition or where such document or thing is not known to the court to be in the possession of any person or where the court considers that the purposes of any inquiry trial or other proceeding under the code will be served by a general search or inspection it may issue a search warrant

S 96 Cr P C

Sec 96 of the Criminal Procedure Code as explained by the Judicial Committee of the Privy Council in *Clarke v Brojendrakishore Roy Choudhury* 39 Cal 953 empowers a magistrate to issue a search warrant before proceedings of any kind are initiated and in view of an enquiry about to be made But see 21 C W N 405 The Collector of Customs Bombay forwarded a letter to the Chief Presidency Magistrate in which he stated that an offence punishable under S 167 (2) of the Sea Customs Act

and S 417 of the Penal Code had been committed and prayed for the issue of a search warrant for searching certain premises for the seizure of certain documents relevant to the investigation of the offence It was held that it was not necessary that there should be a proceeding actually pending before the Magistrate at the time he issues the warrant It was further held that the warrant having been issued for the purpose of a police investigation in the ordinary way but for the purposes of an enquiry by the customs officers the issue of the warrant was not justified by cl 3 of S 96 and was therefore illegal 36 Bom L. R 96.

The part C deals with discovery of persons wrongfully confined

Part IV of the Code deals with prevention of offences

Part IV consists of six Chapters viz VIII IX X XI XII and XIII

Chapter VIII deals with security for keeping the peace and for good behaviour

This chapter consists of three subdivisions A B and C

The subdivision A deals with security for keeping the peace on conviction

The subdivision B deals with security for keeping the peace in other cases and with security for good behaviour

The subdivision C deals with proceedings in all cases subsequent to order for furnishing security

Chapter IX deals with unlawful assemblies

Chapter X deals with public nuisances conditional order for removal of nuisance

Chapter XI deals with Temporary orders in urgent cases of Nuisance or apprehended danger

Chapter XII deals with disputes as to Immovable property

Chapter XIII deals with preventive action of the Police

The part V deals with information to the Police and their power to investigate

This part consists of one chapter containing sections 154 to 176

Part VI deals with proceedings in prosecutions

It consists of 16 chapters from Chapter XV to XXX

Chapter XV deals with jurisdiction of the criminal courts in Inquiries and Trial Chapter XV is subdivided into two parts The first part deals with place of inquiry or trial and the second part deals with conditions requisite for initiation of proceedings

Chapter XVI deals with complaints to Magistrates

Chapter XVII deals with commencement of proceedings before Magistrates

Chapter XVIII deals with inquiry into cases triable by the court of Sessions or High Court.

Chapter XIX deals with the charge It consists of two parts The first

Chapter XXXVIII deals with execution

Chapter XXIX deals with suspensions remissions and commutations of sentences

Chapter XXX deals with previous acquittals and convictions

Part VII deals with Appeal Reference and Revision This part consists of two chapters XXXI and XXXII

Chapter XXXI deals with Appeals

Chapter XXXII deals with Reference and Revision

Part VIII deals with special proceedings and consists of five chapters viz Chapter XXXIII to XXXVII

Chapter XXXIII deals with special provisions relating to cases in which European and Indian British subjects are concerned

Chapter XXXIV deals with lunatics

Chapter XXXV deals with provisions in case of certain offences affecting the administration of Justice

Chapter XXXVI deals with the maintenance of wives and children

Chapter XXXVII deals with directions of the nature of Habeas Corpus

Part IX deals with supplementary provisions and consists of ten remaining chapters

Chapter XXXVIII deals with public prosecutors

Chapter XXXIX deals with bail

Chapter XL deals with the commission for the examination of witnesses

Chapter XLI deals with the special rules of evidence.

Chapter XLII deals with the provisions as to bonds

Chapter XLIII deals with the disposal of property

Chapter XLIV deals with the transfer of criminal cases

Chapter XLIV (A) deals with the supplementary provisions relating to European and Indian British subjects and others

Chapter XLV deals with irregular proceedings

Chapter XLVI deal with the miscellaneous matter

It is therefore clear that there are the following kinds of cases contemplated under the Code of Criminal Procedure —

(1) Security for keeping the peace cases under S. 107 Cr P C

(2) Security for good behaviour from persons disseminating seditious matters cases under S. 108 Cr P C

(3) Security for good behaviour from vagrants and suspected persons, cases under S. 109 Cr P C

(4) Bad livelihood cases

(5) Unlawful assembly cases

(6) Public nuisance cases

(7) Temporary orders in urgent cases of nuisance or apprehended danger cases under S. 144 Cr P C

(8) Disputes as to immoveable property, cases under S 145 Cr P. C.

(9) Disputes concerning rights of use of immoveable property, cases under S 147 Cr P. C

(10) Sanction cases under S 195 Cr. P C

(11) Inquiry into cases triable by the Court of Sessions or High Court

(12) Summons cases

(13) Warrant cases

(14) Summary cases

(15) Sessions cases

(16) High Court sessions cases

(17) Sanction cases under S 476 Cr P C

(18) Contempt cases

(19) Maintenance cases

CHAPTER III.

THE INTERPRETATION OF LAW.

Legislature means what it says *Moni v. Trustees* 22 C W N 1 F B See *Sussex Peerage case* (1844) 11 Cl & F 85, *Nilmoni v Raja Sati Prosad* 37 C L J 202 F B *Warburton v. Loveland* Dow & Cl 480

The language of an enactment must receive its natural meaning without any assumption as to its having probably been the intention to have unaltered the law as it existed before *Norendra v. Kamal* 23 Cal 563 P C. See *Bank v Vagliano* (1891) A C 10, (1918) 4 Pat L J 74, (1919) 4 Pat L J 43) Where an amending Act lays down a rule of procedure it ordinarily affects pending actions Hence when a document which is inadmissible under law at the time the suit is pending in the trial and is made admissible by an amending Act when the appeal is pending the Appellate Court can admit the document (1933) A L J 1584

The purpose of the statute surely is that on a point specifically dealt with it the law should be ascertained by interpreting the language used instead of as before by roaming over a vast number of authorities in order to discover what the law was and extracting it by a minute critical examination of the prior decisions The utility of the legislative enactment would be almost entirely destroyed and the very object of embodying the rule in a code frustrated if the court could be called upon to examine the antecedent decisions and to engraft the rule deducible therefrom on the statute 31 C L J 98

The doctrine that the authority of long established cases is to be maintained is not of universal application *Sri Balusu v. Sri Balusu* 22 Mad 398 I C

No doubt great importance is to be attached to the old authorities, on the strength of which many transactions may have been adjusted and rights determined. But where they are plainly wrong it is the duty of the court to overrule them 1 C L J 510 See *Westland v. Edmonton*, (1918 App Cas 1

The history of legislation can be referred to when reasonable doubt is entertained as to the construction of a statute The proper course is, in the first instance to examine the language of the statute to interpret it, to ask what is its natural meaning, uninfluenced by any consideration derived from the previous state of law to begin with an examination of the previous state of law on the point is to attack the problem on the wrong end, and it is a grave error to force upon the plain language of the section an interpretation which the words will not bear on the assumption of a

supposed policy on the part of the legislature not to depart from the rules of the English law on the subject 32 C L J 91

In considering the construction of a section in an Indian Act which is professedly based on an English enactment the Indian courts are in practice if not in theory bound by the decisions of the English courts 28 C L J 495.

A Judge should not interpret statutory law when it provides for a specific procedure by reference to decisions pronounced under a different system of procedure 31 C L J 283

It is the duty of the court when interpreting Acts of the Legislature, to give to the words used their natural significance A I R 1931 Rang 363

Proceedings of the Legislature are excluded from considerations on the judicial construction of statutes *Administrator v Premlal* 22 Cal. 788 P C If there is an ambiguity the preamble the object of the Act and the proceedings of the Legislature may be referred to 33 Mad L J 591

The heading of a chapter of an Act may be used with considerable freedom to extend the meaning of a section which follows it 3 Pat L J 1, 15 N L P 181

If there is any ambiguity the intention of the Legislature may be ascertained 3 Pat L J 291 F B *Tarler v London* (1913) A C 107 *Sleo v Lanj* 3 Pat L J 581 F B

The illustrations to an Indian statute are to be taken as part of the section *Lala v Mad* 29 C L J 165 P C

When two co ordinate sections are apparently inconsistent an effort must be made to reconcile them 25 C W N 9

For words and phrase See Appendix

BOOK II.

CHAPTER IV.

PROSECUTION IN PRESIDENCY TOWNS

The subject of criminal pleading has been subdivided into four chapters, viz IV V VI and VII The chapter IV and V deal with the complaint, chapter VI with defence and chapter VII with miscellaneous applications A complaint means the allegation made orally or in writing to a magistrate with a view to his taking action under the Code of Criminal Procedure, that some person whether known or unknown has committed an offence but it does not include the report of a police officer

Who can become a complainant ?

It is clear from the definition of complaint in cl (h) sub sec (1) of sec 4 Cr P C that it is not necessary that the complainant should always be the party directly aggrieved by the commission of the offence *Delar Bux v Sjamaj a la Malabar* 18 C W N 921

The definition of complaint does not require any statement of fact beyond an allegation that some person has committed an offence but if that definition is read into sec 190 (1) (*a*) of the Criminal Procedure Code it is clear that before a magistrate takes cognizance he must have before him an allegation of facts constituting the offence a mere repetition of the words of a section of the Penal Code is not a proper compliance with the provisions of the sub section The object of sec 200 of the Criminal Procedure Code requiring a magistrate to examine a complainant possibly is that the facts constituting the offence may be ascertained when in a written complaint they are not given When a written complaint presented before a Presidency magistrate does not contain an allegation of facts constituting the offence if the magistrate examining the complainant does not reduce the examination to writing there may be no written record of the facts constituting the offence But he is not bound by law to do so And where a Presidency magistrate merely noted the fact that he had examined the complainant it might be presumed that before he issued process he had before him an allegation of facts constituting the offence The definition of complaint in Sec 4 (*h*) does not contain any limitation such as that the person lodging the complaint must have personal knowledge of the facts, nor does sec 190 of the Cr P C If a complainant is not speaking from personal knowledge a Magistrate taking cognizance would exercise a wise discretion in making the inquiry

which he is authorized to do by sec 202 of the Cr P C but he is not compelled to do so 25 C W N 357

Particulars to be contained in a petition of complaint—Where the complaint did not set out the facts which constituted the offence but stated that the persons named had committed offences punishable under certain sections of the Penal Code—it was held that a complaint of this description constituted a merely colourable compliance with the provisions of the Cr P C 16 C W N 1105

The charge cannot be maintained without the persons who are known being definitely named The accused not so named stands discharged from the trial initiated on such a complaint The subsequent application before the trying Magistrate for the issue of process against such an accused does not amount to a complaint against him within the meaning of sec 4 Cl (h) of Cr P C 15 C W N 98 Where a person wrote a letter to the Sub divisional Magistrate in which he stated that another person had used insulting language towards him and asked the magistrate to take action and the magistrate on receipt of that letter issued process against the latter person without examining the writer of the letter it was held that the letter in question certainly comes within the definition of complaint in Sec 4 Cr P C and the magistrate should have examined the complainant and then proceeded in accordance with law 17 C W N 448

Every complaint shall contain and shall be sufficient if it contains a statement of the specific offence or offences with which the accused person is charged together with such particulars as may be necessary for giving reasonable information as to the nature of the offence

It is unjust to compel a person to stand his trial when the complainant in his complaint and statement on oath has made no allegations of fact which would if proved constitute a criminal offence 146 I C 402

How to write a petition of complaint—A complaint may be on durable paper and may be either written typewritten or printed Each sheet on which a complaint is set out shall be foolscap size and if more than one sheet is required the sheets shall be fastened together A proper margin not less than 3 inches in width shall be kept on the left hand side of each sheet Figures and abbreviations may be used in a complaint for expressing anything which is commonly expressed thereby

There is a great deal of formal difference between a complaint in mofussil and that in Presidency towns I shall in this chapter deal with the forms of precedents of complaint in use in Presidency towns

In Presidency towns the petitions of complaint are generally filed before the Chief Presidency Magistrate In the city of Calcutta the petitions of complaint relating to the offences committed within the Northern Division of the city are filed before the Additional Chief Presidency Magi

trate and the petitions relating to offences within the Southern Division of the city before the Chief Presidency Magistrate

e following are some of the forms of complaint in use in the Presidency towns —

Application no of 19

In the Court of the Additional Chief Presidency Magistrate Calcutta

Jugo Mussamat of No 13 Panchi Dhobani Lane, Complainant

Versus

Titir Mistri and three others Thana F, Town

Charge —392 448 352 I P C

The humble petition of the abovenamed complainant

Most respectfully sheweth

1 That your honour s petitioner is a widow and lives alone in her hut, whereas the accused (who are her neighbours) are vagabonds of ill repute and drinking habits

2 That at about 10 p m on 22-4 24 the accused being drunk forcibly entered into your petitioner s hut assaulted her with slaps blows and kicks and snatched away the gold chain which your petitioner was wearing

3 That the accused were four in number—some of them stood on the door of your petitioner while others assaulted and robbed your petitioner of the gold chain of Rs 100

4 That your petitioner went to the thana at once and entered diary o the occurrence but she was referred to court Under the circumstances your petitioner prays for process against the accused under sections 392f 352 and 448 I P C

And your petitioner as in duty bound shall ever pray

(Signature of the Pleader) (Signature of the Complainant)

Calcutta 21 4 34

Another form—

In the Court of the Additional Chief Presidency Magistrate
Calcutta
See F Town
Ram Gopal Brahmin of
Messrs Ram Bros, No 7/P Central Avenue
—Complainant
Vs
Himmat Lall—Accused
Charge under Section 408 I P C

The humble petition of the above named Complainant

Most respectfully sheweth

1 That the complainant is the proprietor of the above firm dealing in vegetable product at the above address The accused was a gomastha in the complainant s employ on a pay of Rs 45/ per month and had been working as such from December 1926 The accused was employed by the complainant on the recommendation of one Mulchand Mathoo a friend of the complainant

2 In February last the accused committed Criminal Breach of trust in respect of some money belonging to the complainant but the accused s father and camplainant s friends interfered on his behalf and on the accused giving a pronote for Rs 32/ the complainant pardoned him and reinstated him The accused then started working in the complainant s firm and worked regularly for a month and half

3 That on the morning of the 10th April last the accused took 11 bills for Rs 218 5-0 from complainant and went out to realise the monies from the different constituents of the complainant s firm, but the accused did not turn up with the money The complainant waited for sometime and searched for the accused in vain and then he reported the matter at the Thana that the accused had not returned at the Guddy Then complainant made enquiries and came to know that the accused had realised Rs 218 5 0 from the complainant s constituents and misappropriated the same

4 That among others the accused realised from—

(1) Kangi Bhai of No 12/5/A Nil Moni Dutta Lane Rs 35
(2) Ram Narain of No 105 Cotton Street Rs 52/
(3) Nath Mull Marwari of No 7 Hans Pukar Lane Rs 20 4
(4) Boldeb Halwai of Shibtolla Street Rs 11 0-0
(5) Chimon Lal Mehata of No 6 Central Avenue Rs 24 0-0

etc and misappropriated the same

5 That the complainant reported the matter at the Thana charging the accused with Criminal Breach of Trust

6 That on the 18th April last Mulchand Mathoo brought a letter written by the accused in which the latter admitted having realised Rs 145/ and asked to be pardoned as he had spent the money and promised to make good the amount

7 That the accused's father then came to the complainant's Guddy and took two days' time to make good the amount

8 That neither the accused nor his father came and it has been learnt that the accused is leaving Calcutta to night

Prays for process against the accused under section 408 I P C

And your petitioner as in duty bound shall ever pray

(Signature of the pleader) (Signature of the complainant)

Dated Calcutta 22 4 27

The above two precedents will clearly impress on the reader how petitions of complaint should be drafted in the Presidency towns Now I propose to deal with points which should be borne in mind in drafting such petitions with reference to different offences —

S 120B I P C Criminal Conspiracy

Points (*a*) The accused agreed to do or caused to be done an act

(*b*) Such act was illegal or was done by illegal means

S 143 I P C Being a member of an unlawful assembly

Points (*a*) The assembly consisted of five or more persons

(*b*) The object of the persons so assembled was

To overawe by criminal force or show of criminal force the Legislative or Executive Government of India or the Government of any Presidency or any public servant in the exercise of the lawful power of such public servant

Or

To resist the execution of any law, or of any legal process ,

Or

To commit any mischief or criminal trespass or other offence ,

Or

By means of criminal force, or show of criminal force to any person, to take or obtain possession of any property or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any or supposed right ,

Or

By means of criminal force or show of criminal force compel any person to do what he is not legally bound to do or to omit to do what he is legally entitled to do

(*c*) Such object was common to the persons assembled.

(*d*) The accused joined or continued in such assembly.

(e) The accused did that intentionally

(f) The accused did that with full knowledge of the above facts

S 144, I P. C Joining unlawful assembly armed with deadly weapon

Points (a) to (f)—Same as in S 143 I P C

(g) The accused was armed with a deadly weapon or with anything which used as a weapon of offence is likely to cause death

S 145, I P C Joining or continuing in unlawful assembly knowing it has been commanded to disperse

Points (a) to (f) Same as in S 143 I P C

(g) The unlawful assembly was commanded to disperse

(h) The command was made according to law

(i) The accused joined or continued in the unlawful assembly after it had been commanded to disperse

(j) The accused did that with full knowledge that the assembly was commanded to disperse

S 147, I P C Rioting

Points (a) to (f) Same as in S 143 I P C

(g) Unlawful assembly or any member thereof used force or violence

(h) Such force or violence was required for the common object of the assembly

S 148 I P C Rioting armed with deadly weapon

Points (a) to (h) Same as in S 147 I P C

(i) The accused was armed with a deadly weapon, or with something which was likely to cause death, when used as a deadly weapon

S 151, I P C—Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse

Points (a) The assembly was composed of five or more persons

(b) The assembly was likely to cause a disturbance of the peace

(c) The assembly was commanded to disperse

(d) The command was lawfully made

(e) The accused joined or continued in such assembly after it had been so commanded to disperse

(f) The accused did that with full knowledge

S 152 I P C—Assaulting or obstructing public servant when suppressing riot

Points (a) There was an unlawful assembly

(b) Endeavour was made to disperse it

(c) Person endeavouring to do it was a public servant

(d) He was at the time acting as such public servant.

(e) The accused assaulted or threatened to assault or obstructed or threatened to obstruct such public servant, w

so discharging his duties or that he used or threatened to use or attempted to use criminal force to such public servant whilst so discharging his duties

S 153 I P C Wantonly giving provocation with intent to cause riot

Points (a) The accused did an illegal act

(b) He did that malignantly or wantonly

(c) The illegal act caused provocation

(d) The accused when *giving such provocation* intended or knew that it was likely that such provocation would cause a riot to be committed

S 157 I P C Harbouring persons hired for an unlawful assembly

Points (a) The house or premises was or were in the occupation or charge of or under the control of the accused

(b) The accused harboured received or assembled therein the persons in question

(c) The said persons had been hired engaged or employed or were about to become so to join or become members of an unlawful assembly

(d) The accused did that knowing that such person had been so hired for that purpose

S 158 I P C Being hired to take part in an unlawful assembly or riot or to go armed

Points (a) The accused was engaged or hired or attempted to be hired or engaged

(b) The engagements or hiring was for doing or assisting in doing an act which would make an assembly an unlawful one

Second part of the section—

(c) The accused went or offered to go armed with a deadly weapon

S 160 I P C—Affray

Points (a) There was fight between two or more persons

(b) Such fight took place in a public place

(c) The fight disturbed the public peace

S 193 I P C—False Evidence

Points (a) The accused was legally bound to *state the truth* either by an oath or by an express provision of law

Or

The accused made a declaration

(b) He made such statement or declaration whilst so bound

(c) The statement or declaration was made in course of a judicial proceeding

(d) The statement or declaration is false

(e) He when making such statement or declaration knew it to be false or believed it to be false or did not believe it to be true

(f) He made such statement intentionally

Second part of the section—

(j) The accused caused a certain circumstance to exist or made the false entry or made the document to contain a false statement

(k) He did that by intending that such circumstances entry or statement should appear in evidence in a judicial proceeding or in a proceeding taken by law before a public servant or in a proceeding before an arbitrator

S 194 I P C—Giving or fabricating false evidence with intent to procure conviction of capital offence, also in case where innocent person is thereby convicted and executed

Points (a) to (h) Same as in S 193

(i) The accused when giving or fabricating the same intended thereby to cause or knew that it was likely that he would thereby cause the person in question to be convicted of capital offences

Second part of the section—

(j) The Capital punishment was awarded

(k) The person executed was an innocent person

S 199 I P C—False statement made in declaration which is by law receivable as evidence

Points (a) The accused made or subscribed the decleration in question

(b) The court was bound or authorised to receive such declaration as evidence

(c) The accused made the statement in question contained in such declaration

(d) The statement is false

(e) The false statement touched a point material to the object of such declaration

(f) The accused at the time of making the false statement knew that it was false or believed it to be false or did not believe it to be true

S 201 I P C—Causing disappearance of evidence of offence or giving false information to screen offender—(1) if a capital offence (2) if punishable with transportation (3) if punishable with less than ten years' imprisonment

Points (a) An offence was committed

(b) The accused knew or had reason to believe that such offence was committed

(c) The accused caused evidences thereof to disappear or gave false information respecting such offence knowing or having reason to believe the same to be false

(d) The accused did that with intent to screen the offender from legal punishment

(1) (2) or (3)—

(e) The offence was either punishable with death or transportation for life, or with imprisonment for less than ten years

S 202 I P C—Intentional omission to give information of offence by person bound to inform

Points (a) The offence was committed

(b) The accused knew or had reason to believe that such offence was committed

(c) He omitted to give information of the same

(d) Such omission was intentional

(e) The accused was legally bound to give the information which he omitted to give

S 203 I P C—Giving false information respecting an offence committed

Points (a) The offence was committed

(b) The accused knew or had reason to believe that such offence was committed

(c) He gave the information

(d) Such information related to that offence

(e) The information is false

(f) When he gave such information he knew or believed it to be false

S 204 I P C—Destruction of document to prevent production as evidence

Points (a) The accused secreted or destroyed the document or that he obliterated or rendered illegible the whole or any part of such document

(b) He was lawfully bound to produce the document as evidence in a court of Justice or before a public servant

(c) He did that with the intention of preventing the document from being produced or used as such evidence or that he did that after he had been summoned or required to produce it for that purpose

S 205 I P C—False personation for purpose of act or proceeding in suit or prosecution

Points (a) The accused falsely personated the person in question

(b) He made the admission

(c) He made the admission in assumed character

(*d*) The admission was made in a suit or in a criminal prosecution

S 206 I P C—Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution

Points (*a*) The evidence of fine was to the knowledge of the accused, likely to be pronounced or that the decree or order was to the knowledge of the accused likely to be made

(*b*) It was a court of Justice or other competent authority pronouncing or about to pronounce such sentence or it was a court of Justice making or about to make such decree or order in a civil suit

(*c*) The property or interest therein became or was likely to be taken as a forfeiture of fine or taken in execution of decree or order

(*d*) The accused removed concealed transferred or delivered property or interest therein with intent to prevent the property from being taken

(*e*) He did that with intent to defraud

S 207 I P C—Fraudulent claim to property to prevent its seizure as forfeited or in execution

Points—(*a*) The sentence of fine was to the knowledge of the accused likely to be pronounced or the decree or order was to his knowledge likely to be made

(*b*) The court of Justice or other competent authority pronounced or was about to pronounce the sentence or the court of Justice made or was about to make the decree or order in civil suit

(*c*) The property in question or interest therein became or was likely to become liable to be taken as a forfeiture for fine or taken in execution of decree or order

(*d*) The accused accepted received or claimed property or interest with intent to defraud or he practised a deception touching the right thereto

(*e*) He had no right or rightful claim thereto

(*f*) He knew he had no right or rightful claim thereto

(*g*) He did as above in order to prevent property or interest therein from being taken

S 208, I P C—Fraudulently suffering decree for sum not due

Points (*a*) The accused caused or suffered the decree or order to be passed against him

(*b*) Such decree or order was for a sum not due by accused or for sum larger than was due or for property or interest therein to which the decreeholder was not entitled

(d) The accused did that with intent to screen the offender from legal punishment

(1) (2) or (3)—

(e) The offence was either punishable with death or transportation for life or with imprisonment for less than ten years

S 202 I P C—Intentional omission to give information of offence by person bound to inform

Points (a) The offence was committed

(b) The accused knew or had reason to believe that such offence was committed

(c) He omitted to give information of the same

(d) Such omission was intentional

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(*b*) It was a court of Justice or other competent authority pronouncing or about to pronounce such sentence or it was a court of Justice making or about to make such decree or order in a civil suit

(*c*) The property or interest therein became or was likely to be taken as a forfeiture of fine or taken in execution of decree or order

(*d*) The accused removed concealed transferred or delivered property or interest therein with intent to prevent the property from being taken

(*e*) He did that with intent to defraud

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Points —(*a*) The sentence of fine was to the knowledge of the accused likely to be pronounced or the decree or order was to his knowledge likely to be made

(*b*) The court of Justice or other competent authority pronounced or was about to pronounce the sentence or the court of Justice made or was about to make the decree or order in civil suit

(*c*) The property in question or interest therein became or was likely to become liable to be taken as a forfeiture for fine or taken in execution of decree or order

(*d*) The accused accepted received or claimed property or interest with intent to defraud or he practised a deception touching the right thereto

(*e*) He had no right or rightful claim thereto

(*f*) He knew he had no right or rightful claim thereto

(*g*) He did as above in order to prevent property or interest therein from being taken

S 208, I P C—Fraudulently suffering decree for sum not due

Points (*a*) The accused caused or suffered the decree or order to be passed against him

(*b*) Such decree or order was for a sum not due by accused or for sum larger than was due or for property or interest therein to which the decreeholder was not entitled

(c) The accused did that with intent to defraud

Second part of the section —

(a) The decree against the accused was satisfied

(b) He caused or suffered such decree or order to be executed against him

(c) Such execution was for that in respect of it was so satisfied

(d) The accused did that with intent to defraud

S 209 I P C — Dishonestly making false claim in court

Points (a) The claim was made in a court of Justice

(b) The accused made such claim

(c) That claim was a false one

(d) The accused knew it to be false

(e) He made such claim intending to defraud or to cause wrongful gain or loss or annoy any person

S 210 I P C — Fraudulently obtaining decree for sum not due

Points (a) The accused obtained a decree or order or suffered or permitted the same to be done in his name

(b) The accused did that with intent to defraud

(c) He obtained satisfaction of the same

(d) He caused such decree or order to be executed or suffered or permitted the same to be so done in his name

(e) Execution was so obtained for that in respect of which the decree was satisfied

(f) The accused did that with intent to defraud

S 211 I P C — False charge of offence made with intent to injure

Points (a) The accused instituted or caused to be instituted criminal proceedings by which he charged a person of an offence

(b) There was no just or lawful cause for such proceedings or that such charge was false

(c) The accused knew such criminal proceeding or charge to be without just or lawful grounds

(d) He did that with intent to cause injury to that person

S 212 I P C — Harbouring offender — if accused of an offence punishable with capital sentence or with transportation for life or with imprisonment

Points (a) An offence was committed by the person harboured

(b) The offence is punishable with death or transportation for life or imprisonment

(c) The accused harboured or concealed the offender

(d) The accused knew him to be an offender or had reason to believe him to be so

(c) The accused intended to screen the offender from legal punishment

S 228, I P C —Intentional insult or interruption to public servant sitting in judical proceeding

Points (a) The person offended is a public servant

(b) At the time of the offence the public servant was sitting in some stage of a judicial proceeding

(c) When he was so sitting the accused offered an insult to such public servant, or caused some interruption to him

(d) He did that intentionally

S 269 I P C —Negligent act likely to spread infection of disease dangerous to life

Points (a) The disease was infectious and dangerous to life

(b) The accused did an act which was likely to spread infection of the same

(c) Such act was unlawful or negligent

(d) The accused knew or had reason to believe that such act was likely to spread infection of such disease

S 270 I P C —Malignant act likley to spread infection of disease dangerous to life

Points (a) to (d)—S 269 I P C

(e) The accused acted malignantly

S 272 I P C —Adulteration of food or drink intended for sale

Points (a) The article is food or drink

(b) The accused adulterated it

(c) Such adulteration rendered it noxious if taken as food or drink

(d) The accused at the time of such adulteration intended to sell such article as food or drink or knew it to be likely that the article would be sold as food or drink

S 273 I P C —Sale of noxious food or drink

Points (a) The article is food or drink

(b) The accused sold or offered or exposed for sale such article

(c) At the time it was sold it was rendered or became noxious or was in a state unfit for food or drink

(d) He at the time knew or had reason to believe that the article sold was noxious or unfit for food or drink

S 274 I P C —Adulteration of drug

Points (a) The article is a drug or medical preparation

(b) It was adulterated by the accused

(c) Such adulteration tended to lessen its efficacy, or to change its operation or to make it noxious

(d) The accused intended that such adulterated drug should be sold or used for a medicinal purpose as unadulterated or knew that it was likely that it would be so sold or used for the same

S 275 I P C — Sale of adulterated drugs

Points (a) The drug was adulterated

(b) The adulteration was such as to lessen its efficacy or change its operation or render it noxious

(c) The accused sold, or offered or exposed such drug for sale or that he issued it from a medical dispensary or that he caused it to be used for a medical purpose

(d) He sold or issued such drug as an adulterated drug or caused it to be used by a person who did not know of such adulteration

(e) *He knew that such drug was so adulterated when so sold*

S 276 I P C — Sale of drug as a different drug or preparation

Points (a) The accused sold or offered or exposed for sale or issued from a dispensary for medical porposes the drug or medical preparation

(b) It was so sold by him as a drug or medical preparation different from what it is

(c) He knew of such difference at the time it was sold

S 277 I P C — Fouling water of public spring or reservoir

Points (a) The spring or reservoir is public

(b) The accused caused the water to become corrupt or foul

(c) He did so voluntarily

(d) Such actions rendered the water less fit for use than it ordinarily was

S 278 I P C — Making atmosphere noxious to health

Points (a) *The accused caused the atmosphere to be vitiated*

(b) He did so voluntarily

(c) Such vitiation was in its nature noxious to health

(d) It was noxious to the health of persons dwelling or carrying on business in the neighbourhood of the place or passing along public way

S 279 I P C — Rash driving or riding on a public way

Points (a) The accused was driving a vehicle or that he was riding

(b) It was a public way on which the accused was driving or riding

(c) The ac used was driving or riding in a rash or negligent manner

Negligence cannot be inferred from the mere fact of a person having been run over

(d) Rash driving or riding was such as to endanger human life or such as was likely to cause hurt or injury

S 280 I P C —Rash navigation of vessel

Points (a) It was a vessel which was being navigated

(b) The accused was navigating the same vessel

(c) The accused was doing so in a rash or negligent manner

(d) The driving was such as to endanger human life or such as to be likely to cause hurt or injury

S 281 I P C —Exhibition of false light mark or buoy

Points (1) The accused exhibited the light mark or buoy in question

(2) Such light mark or buoy was false

(3) The accused exhibited the light mark or buoy in question, intending or knowing that such false exhibition would be likely to mislead any navigator

S 282 I P C —Conveying person by water for hire in unsafe or overloaded vessel

Points (a) The accused conveyed a person for hire or caused the same to be done

(b) The mode of conveying that person was in a vessel by water

(c) When such person was thus conveyed the accused acted negligently or with a knowledge of the state of such vessel

S 283 I P C —Danger or obstruction in public way or line of navigation

Points (a) The accused caused the danger obstruction or injury in question

(b) The same was caused by his act or omission to take order with property in his possession or under his charge

(c) The person put in danger or obstructed or injured was then in a public way or public line of navigation

S 284 I P C —Negligent conduct with respect to poisonous substances

Points (a) The substance in question is poisonous and if taken would be dangerous to life or likely to cause hurt or injury

(b) The accused did an act therewith which endangered or was likely to cause hurt or injury

(c) The accused did such act rashly or negligently and was in possession of such substance and omitted to take such

order therewith, as was sufficient to guard against a probable danger to human life therefrom and such omission was negligent or with a knowledge of such probable danger

S 285 I P C —Negligent conduct with respect to fire or combustible material

Points (a) The accused did an act that endangered or was likely to *endanger life or was likely to cause hurt or injury*

(b) Such act was done with fire or some combustible matter

(c) Such act was done rashly and negligently

(d) The accused omitted to take such order therewith as was sufficient to guard against a probable danger to human life therefrom

(e) Such omission on the part of the accused was negligent or *with knowledge of such probable danger*

S 286 I P C —Negligent conduct with respect to explosive substance

Points The same points as required for Sec 285 I P C showing that *the act of the accused was done with any explosive* substance

S 287 I P C —Negligent conduct with respect to machinery

Points (a) The accused did an act that endangered or was likely to endanger life or was likely to cause hurt or injury

(b) Such act was done with reference to machinery

(c) Such act was done rashly or negligently

S 288 I P C —Negligent conduct with respect to pulling down or repairing buildings

Points (a) The accused was pulling down or repairing a building

(b) The accused omitted to take sufficient order therewith to guard against a probable danger of the fall thereof or any part thereof

(c) Such fall would endanger human life

(d) Such omission was negligent or with a knowledge of such probable danger

S 289 I P C —Negligent conduct with respect to animal

Points (a) *The animal was in possession of the accused*

(b) The accused omitted to take sufficient order therewith to guard against probable danger to human life or of grievous hurt therefrom

(c) Such omission on the part of the accused was negligent or with knowledge of such probable danger

If the animal was not naturally fierce or vicious the onus of proving negligence lies on the prosecution

S 290 I P C—Public nuisance in cases not otherwise provided for

Points (a) The accused did an act or was guilty of an illegal omission
(b) Such act or ommission caused injury danger or annoyance
(c) Such injury danger or annoyance was common to the public or the people in general who dwell or occupy property in the vicinity

S 291 I P C—Continuance of nuisance after injunction to discontinue

Points (a) The issue of the injunction
(b) Such injunction was legally issued
(c) The injunction is one which restrains the repetition or continuance of a public nuisance

S 292 I P C—Sale etc of obscene books etc

Points (a) The book etc is of an obscene nature
(b) The accused sold the book etc or attempted or offered to do so or he distributed imported or printed the same for sale or hire or attempted or offered to do so or he wilfully exhibited to public view the same or attempted or offered to do so

If a publication is in fact obscene it is no defence to a charge of selling or distributing the same that the intention of the person so charged was innocent

S 293 I P C—Having in possession obscene book etc for sale or exhibition

Points (a) The book etc is of an obscene nature
(b) The accused had possession of the same
(c) Such possession was for the purpose of sale distribution or public exhibition

S 294 I P C—Obscene acts and songs

Points (a) The accused did some act or that the accused sang recited or uttered any obscene song ballad or words
(b) This was done in or near a public place
(c) It was of an obscene nature
(d) It caused annoyance to others

S 294A I P C—Keeping lottery office

Points (a) The accused has kept an office or place
(b) The office or place was used for the purpose of drawing a lottery

(c) Such letters was not authorised by Government
(d) The accused published the proposal in question
(e) The nature of such proposal was to pay etc on an event or contingency as described in the section

S 295 I P C —Injuring or defiling place of worship with intent to insult the religion of any class

Points (a) The place was one of worship or that the object was a sacred one
(b) The place or object was held sacred by a class of person
(c) The accused destroyed damaged or defiled the same
(d) The accused did so (i) with the intention of thereby insulting the religion of a class of persons (ii) with the knowledge that a class of persons is likely to consider such destruction etc as an insult to their religion

S 296 I P C —Disturbing religious assembly

Points (a) The existence of the assembly in question
(b) Such assembly was at the time of the offence engaged in performing religious worship or ceremony
(c) The assembly being engaged in such performance was lawful
(d) The accused caused disturbance of such assembly when so engaged
(e) The accused did as above voluntarily

It is not necessary that the accused should have had an active intention to disturb religious worship If he knew that he was likely to disturb it it is sufficient

S 297 I P C —Trespassing on burial places etc

Points (a) The place in question was (i) a place of worship, or (ii) a place of burial etc
(b) The accused committed trespass therein
(c) The accused did so (i) intending thereby to wound the feelings of some person, or to insult the religion of some person, or (ii) with knowledge that the feelings of some person would be likely to be wounded thereby or that the religion of some person would be likely to be insulted thereby

S 298 I P C —Uttering words etc with deliberate intent to wound religious feelings

Points (a) The accused uttered the words or made the gesture etc
(b) The accused did so intending to wound the religious feelings of any person
(c) Such intention on the part of the accused was deliberate

S 302 I P. C —Murder

Points (a) The death of a human being has actually taken place

(b) Death of a human being has been caused, by or in consequence of the act of the accused

(c) The act was done with the intention of causing death or it was done with the intention of causing such bodily injury (i) as the accused knew to be likely to cause death or (ii) was sufficient in the ordinary course of nature to cause death

S 304 I P C —Culpable Homicide not amounting to murder

Points (a) The person in question died

(b) Death was caused by the accused

(c) The accused intended by such act to cause death or intended by such act to cause such bodily injury as was likely to cause death

(d) The accused did that knowingly

S 304A, I P C —Causing death by negligence

Points (a) The person in question died

(b) The accused caused such death

(c) Such act of the accused was rash or negligent although it did not amount to culpable homicide

Sec 306 I P C —Abetment of suicide

Points (a) The person in question committed suicide

(b) The accused abetted the commission thereof

Sec 309 I P C —Attempt to commit suicide

Points (a) The act of the accused amounted to an attempt

(b) The attempt was complete by doing an act towards the commission of suicide

S 312 I P C —Causing miscarriage

Points (a) The woman was with child or that she was quick with child

(b) The accused did some act likely to cause a miscarriage

(c) He did so voluntarily

(d) The woman did miscarry in consequence

(e) Such miscarriage was not caused in good faith in order to save that woman's life

S 317 I P C —Exposure and abandonment of child under twelve years by parent or person having care of it

Points (a) The child is under twelve years of age

(b) The accused is the father or mother or person having the care of that child

(c) He exposed or left the child in the place in question

(d) He so exposed or left the child with the intention of wholly abandoning it

S 318 I P C—Concealment of birth by secret disposal of dead body

Points (a) A child was born

(b) The child died either before during or after its birth

(c) The accused buried or otherwise disposed of the dead body

(d) Such burial or disposal of the body was secretly done

(e) The accused thereby intentionally concealed or endeavoured to conceal the birth of such child

S 323 I P C—Voluntarily causing hurt

Points (a) The accused by his act caused bodily pain disease or infirmity to the complainant

(b) He did such act intentionally or with a knowledge that it would cause the hurt

(c) Such was caused without provocation

S 324 I P C—Voluntarily causing hurt by dangerous weapons or means

Points (a) to (c) Same as S 323

(d) The accused caused it by means of an instrument for shooting stabbing or cutting or by an instrument which might be used as a weapon likely to cause death or by means of fire etc poison etc, or any substance which it is deleterious to the human body to inhale etc or by means of any animal

S 325 I P C—Voluntarily causing grievous hurt

Points (a) The accused caused hurt of any of the kinds described in S 320 I P C

(b) The accused intended or knew that he was likely to cause grievous hurt of such a kind

(c) He did that voluntarily

S 326 I P C—Voluntarily causing grievous hurt by dangerous weapons or means

Points (a) The accused caused the grievous hurt

(b) It was done voluntarily

(c) The accused acted under no provocation

(d) The grievous hurt was caused by an instrument for shooting etc or by means of any instrument which used as a

weapon of offence, is likely to cause death, or by means of fire etc or by means of any poison etc or by means of any substance which it is deleterious to the human body to inhale etc or by means of any animal

S 327 I P C—Voluntarily causing hurt to extort property or to constrain to do an illegal act

Points (a) The accused caused hurt

(b) The accused caused such hurt in order to extort from the sufferer or person interested in him some property or valuable security or he caused such hurt in order to constrain the sufferer or a person interested in him to do something illegal or to facilitate the commission of an offence

S 330 I P C—Voluntarily causing hurt to extort confession or to compel restoration of property

Points (a) The accused caused hurt

(b) The accused caused such hurt in order to extort from the sufferer or a person interested in him a confession or some information or the accused caused such hurt in order to constrain the sufferer or a person interested in him to restore or to cause the restoration of some property or valuable security

(c) Such confession or information was required leading to the detection of an offence or of some misconduct

S 334 I P C—Voluntarily causing hurt on provocation

Points (a) The accused caused bodily pain disease infirmity

(b) It was caused when he was under grave and sudden provocation

(c) He neither intended nor knew it to be likely to cause it to any person other than the person who gave the provocation

S 335 I P C—Act endangering life or personal safety of others

Points (a) The accused did the act in question

(b) It was done rashly or negligently

(c) It was such as to endanger the life or personal safety of others

S 341 I P C—Wrongful restraint

Points (a) The accused obstructed the person

(b) Such obstructions prevented the person from proceeding in a direction in which he had a right to proceed

(c) The accused caused such obstruction voluntarily

S 342 I P C — Wrongful confinement

Points (a) The accused obstructed the complainant

(b) Such obstruction was voluntary

(c) The effect of such obstruction was to restrain that person from proceeding beyond a certain limit

(d) The restraint was wrongful

S 352 I P C — Assault or criminal force otherwise than on grave provocation

Points (a) The accused made a gesture or preparation to use criminal force

(b) He did this in the presence of the complainant

(c) He intended or knew that it was likely that such gesture etc would cause the complainant to apprehend that such criminal force would be used

(d) such gesture etc caused the complainant to apprehend the same

(e) The accused acted under no grave or sudden provocation

Or

(a) The accused used force to the complainant

(b) He did so intentionally

(c) He used such force without the complainant's consent

(d) He did so in order to commit an offence or he intended to cause or knew it to be likely that he would thereby cause injury, fear or annoyance to the complainant

(e) He had no grave or sudden provocation, from the complainant

S 354 I P C — Assault or criminal force to woman with intent to outrage her modesty

Points (a) The accused assaulted etc a female

(b) He intended thereby to outrage her modesty or that he knew it to be likely that he would thereby outrage her modesty

S 355 I P C — Assault or criminal force with intent to dishonour person otherwise than on grave provocation

Points (a) The assault or use of criminal force by the accused

(b) The accused intended thereby to dishonour the person assaulted

(c) He did not receive grave or sudden provocation from the person so assaulted

S 356 I P C — Assault or criminal force in attempt to commit theft of property carried by a person

Points (a) The assault or use of criminal force by the accused

(b) The person assaulted at the time was wearing or carrying the property in question

(c) The accused committed such assault in attempting to commit theft of such property

S 357 I P C—Assault or criminal force in attempt to wrongfully confine a person

Points (a) The assault or criminal force by the accused

(b) He did so in an attempt to wrongfully confine the person assaulted

S 358 I P C—Assault or criminal force on grave provocation

Points (a) Assault or criminal force by the accused

(b) There was grave and sudden provocation

S 363 I P C—Kidnapping

Points (a) *The person kidnapped was in British India*

(b) The accused conveyed that person beyond the limits of British India

(c) He did so without the consent of that person or of some person legally authorized to consent on that person's behalf

Or

(a) The person kidnapped was a minor under fourteen years of age, or under sixteen years of age or such person was of unsound mind

(b) Such minor, or person of unsound mind was at the time, lawfully entrusted to the keeping of a guardian

(c) The accused took or enticed such minor or person of unsound mind out of such keeping

(d) He so took or enticed without the consent of such guardian

S 364 I P C—Kidnapping or abducting in order to murder

Points (a) Kidnapping by the accused

(b) He kidnapped in order that such person might be murdered or that such person might be so disposed of, as to be put in danger of being murdered

Or

(a) The accused compelled the person to go from the place in question

(b) He so compelled that person by means of force or that he induced that person to do so by deceitful means

(c) He so abducted the person in question in order that such person might be murdered or that such person might

be so disposed of as to be put in danger of being murdered

S 365 I P C—Kidnapping or abducting with intent secretly and wrongfully to confine person

Points (a) Kidnapping or abduction by the accused

(b) The accused intended that the person kidnapped or abducted should be kept in wrongful or secret confinement

S 366 I P C—Kidnapping or abducting woman to compel her marriage

Points (a) Kidnapping or abduction by the accused

(b) The person kidnapped or abducted is a woman

(c) The accused intended or knew that woman might or would be compelled to marry a person against her will or that she might or would be forced or seduced to illicit intercourse.

S 376 I P C—Rape

Points (a) The accused had sexual intercourse with the woman in question

(b) The act was done under circumstances mentioned in S 37[illegible] I P C

(c) Woman was not the wife of the accused or that she wa[illegible] under twelve years of age if she was his wife

(d) There was penetration

S 379 I P C—Theft

Points (a) The property in question is moveable property

(b) Such property was in the possession of a person

(c) The accused moved that property whilst in the possessio[illegible] of that person

(d) He did that without the consent of that person

(e) He did that in order to take the same out of the possessio[illegible] of that person

(f) He did so with intention of causing wrongful gain to himse[illegible] or wrongful loss to that person

S 380 I P C—Theft in dwelling house

Points (a) to (f) as in S 379 I P C

(g) The property was at the time of the theft in building, hu[illegible] or vessel

(h) Such building, hut or vessel, was used as a human dwellin[illegible] or for the custody of property

S 381 I P C—Theft by clerk or servant of property in possession [illegible] master

Points (a) to (f) as in S 379 I P C

(g) The accused was at the time a clerk or servant and was employed in such capacity by person in whose possession the stolen property was

S 384 I P C —Extortion

Points (a) The accused put the complainant in fear of some injury

(b) Such injury was either intended to be caused to the complainant or to some other person

(c) The accused did that intentionally

(d) The accused thereby induced the person so put in fear to deliver to some person some property or valuable security, or something signed or sealed which was convertible into a valuable security

(e) The accused acted dishonestly in doing as above

S 392 I P C —Robbery

Points (a) The accused committed theft

(b) The accused caused or attempted to cause to some person death hurt or wrongful restraint or fear of instant death of instant hurt or of instant wrongful restraint

(c) He did that in committing such theft or in order to commit such theft or in carrying away or attempting to carry away the property obtained by such theft

(d) He did that voluntarily

Or

(a) The accused committed extortion

(b) He was at the time of committing it in the presence of the person put in fear

(c) He committed it by putting that person or some other person in fear of instant death or of instant hurt or of instant wrongful restraint

(d) He induced the person so put in fear to deliver up then and there the thing extorted

S 396 I P C —Dacoity

Points (a) Robbery was committed or attempted

(b) Five or more persons committed or attempted to commit robbery or the whole number of persons committing or attempting to commit robbery was five or more

(c) Such persons acted conjointly

S 403 I P C —Criminal misappropriation of property

Points (a) The property in question is moveable property

(b) The accused misappropriated it or converted it to his own

(c) He did that dishonestly

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S 406 I P C—Criminal Breach of Trust

Points (a) The accused was entrusted with property or with dominion over it

(b) He misappropriated it or converted it to his own use or used it or disposed of it

(c) He did that in violation of any direction of law prescribing the mode in which such trust was to be discharged or any legal contract express or implied which he had made touching the discharge of such trust or that he wilfully suffered some other persons to do as above

(d) He acted dishonestly

S 411 I P C—Dishonestly receiving stolen property

Points a) The property in question is stolen property

(b) The accused received or retained such property

(c) He did that dishonestly

S 417 I P C—Cheating

Points (a) The person deceived delivered to some one or consented that some person shall retain certain property

(b) The person deceived was induced by the accused to do as above

(c) Such person acted upon such inducement in consequence of his having been deceived by the accused

(d) The accused acted fraudulently or dishonestly when so inducing that person

Or

(a) The person deceived did or omitted to do something which he was not bound to do or omit to do

(b) And (c)—As above

(d) The accused induced that person intentionally

(e) Such act or omission caused or was likely to cause damage or harm to that person in body mind reputation or property

S 420 I P C—Cheating and dishonestly inducing delivery of property

Points (a) to (e) of S 417

In this section it is to be noted that the injury caused is the delivery of property or the making altering or destroying wholly or partially a valuable security, or making altering or destroying anything signed or sealed which is capable of being converted into a valuable security

S 426 I P C—Mischief

Points (a) The accused caused the destruction of some property or some change in such property or in the situation thereof

(b) The above act destroyed or diminished the value or utility of such property or affected it injuriously

(c) The accused did that intending or knowing that he was likely to cause loss or damage to the public or to any person

(d) Causing of such damage or injury was wrongful

S 447 I P C—Criminal Trespass

Points (a) The complainant had possession of the property in question

(b) The accused entered into or upon the property or after having lawfully entered unlawfully remained there

(c) He so entered or remained there with the intention to commit an offence or to intimidate insult or annoy the person in possession

S 465 I P C—Forgery

Points (a) The accused made signed sealed or executed the document or any part of it or made a mark denoting execution

(b) He did with the intention of causing it to be believed that such document was made signed sealed or executed by or by the authority of another person or that it was executed at a particular time

(c) Such another person did not so execute or did not authorise such execution or that such execution was not at that particular time

(d) The accused knew that it was not so executed either by such person or by the authority of such person or at that time

(e) He did that dishonestly or fraudulently or with intention to cause danger or injury or to support any claim or title or to cause a person part with property or to cause any person to enter into an express or implied contract or to commit a fraud or that a fraud might be committed

Or

(a) Making or executing the document by some one

(b) The accused altered such document by cancellation or otherwise

(c) Such alteration was in a material part of the document

(d) The accused had no lawful authority to make such alteration

(e) He did that dishonestly or fraudulently or with intention as above

Or

(a) The accused caused a person to sign seal, execute or alter the document

(b) Such person was ignorant of the contents of the document, or of the nature of the alteration

(c) Such ignorance was due to unsoundness of mind or intoxication or a deception practised upon him

(d) The accused knew of such ignorance
(e) He acted dishonestly or fraudulently or with intention as above

S 471 I P C—Using as genuine a forged document

Points (a) The document was forged one
(b) The accused used such document
(c) He used it as a genuine one
(d) He knew or had reason to believe that it was a forged one
(e) He used it dishonestly

S 477A I P C—Falsification of Accounts

Points (a) The accused destroyed altered mutilated or falsified the book paper writing valuable security or account in question
(b) The accused was a clerk officer or servant, or acted in any such capacity
(c) The books paper etc belonged to or was in possession of his employer or had been received by him for or on behalf of his employer
(d) The accused did that wilfully and with intent to defraud

Or

(a) The accused made or abetted the making of any false entry in or omitted or altered or abetted the omission or alteration of some material particular from or in such book etc
(b) (c) and (d) as above

S 500 I P C.—Defamation

Points (a) The imputations in question consisted of words spoken or intended to be read or of signs
(b) The imputations concerned the complainant
(c) The imputations emanated from the accused
(d) He made or published the same
(e) He intended thereby to harm the reputation of the complainant or that he knew or had reason to believe that it would do that

S 506 I P C—Criminal Intimidation

Points (a) The accused threatened some person
(b) Such threat consisted of some injury to his person reputation or property, or to the person reputation or property of some one in whom he is interested
(c) He did that with intention to cause alarm to that person or to cause that person to do any act which he is not legally bound to do or omit to do any act which he is legally entitled to do as a means of avoiding the execution of such threat

CHAPTER V.

PROSECUTION IN MUFASSIL.

The complaint in Mufassil has its peculiar form The forms described in this chapter will impress upon the readers the way how to draft them Besides the form the substance of the petition of complaint in mufassil is the same as in the Presidency towns The points noted for the variety of offence in the last chapter should therefore be taken into consideration while drafting a complaint in Mufassil

The following are some of the petitions of complaint filed in Mufassil Criminal courts —

In the Court of the Extra Assistant Commissioner of Golaghat District Sibsagar

Signature of Complainant

Name and address of the complainant	Name and address of the accused who are known	Name and address of the witnesses	Date time and place of occurrence	Section or Sections with which the accused are charged
Dilaras Konch of Dhodang P S Golaghat In the District of Sibsagar	1 Gendhen Konch 2 Deoram Konch 3 Bapa Konch 4 Keto Konch 5 Goti Konch of Dhodang P S Golaghat	1 Bihu Kcot 2 Butu Kuttum of Dhodang and many other witnesses	9th Bhadra 1333 B S at 10 A M at Dhodang	Sections 147 and 326 I P C

The complainant states

On the 9th Bhadra 1333 B S at 10 A M the complainant was clearing off his garden lands at Dhodang when the accused persons formed in unlawful assembly with the common object of committing a criminal trespass upon the same came and beat him with Dao and *lathis and voluntarily inflicted severe injuries on the complainant's* person The complainant went to the hospital where he was confined to bed for a month The complainant sent information to the police but no action was taken by them Prays for process Dated the 10th Aswin 1333 B S

ANOTHER FORM

In the Court of the Sub-divisional officer of Baraset.

Signature of
Complainant

Name and address of the complainant	Name and address of the accused	Name and address of the witnesses	Date time and place of the occurrence	Sections of the Code with which the accused is charged
Sm Menaka Dasi of Baraset thana Baraset Dist 24 Parganahs	Haricharan Das of Baraset thana Baraset Dist 24 Parganahs	1 Kalicharan Pal 2 Osman Sheikh 3 Panchi Dasi all of Baraset thana Baraset District 24 Parganahs	Baraset town at 11 P M on the 2nd April 1926	Ss 341 363 and 366 I. P C

The complainant states as follows —The complainant's daughter Rani Dasi aged 15 years lived with her at Baraset town under her lawful guardianship The accused often came to the complainant's house and tried to become intimate with her said daughter Yesterday the complainant went to her cousin's house when the accused in her absence came to her place with two unknown persons at about 11 P M and forcibly took her against her will in a hackney carriage belonging to the witness Osman Sheikh to the village Madhyamgram where she has been wrongfully confined in a garden house belonging to the accused

The complainant therefore prays for process.
Dated the 3rd April 1926.

ANOTHER FORM

In the Court of the Sub divisional officer of Panaghat

Signature of the complainant

Name and address of the complainant	Name and address of the accused	Name and address of the witnesses	Date time and place of the occurrence	Sections of the Code with which the accused is charged
Ram Chandra Sett of Panaghat, thana Panaghat in the Dist of Nadia	Krishna Chandra Bhattacharyya of Panaghat thana Ranaghat in the District of Nadia	1 Kali Kamal Das 2 Hari Charan Nath 3 Ram Hari Mitter all of Panaghat	10th March 1923 at 4 P M	S 323 I P C

The complainant states as follows —

The complainant took a loan of 100/ from the accused and could not pay him off on account of adverse circumstances Day before yesterday at 4 P M when the complainant was sitting on his ledge—the accused wanted his money back—The complainant humbly prayed for time The accused beat the complainant with his stick in the presence of witnesses

The complainant therefore prays for process against the accused Dated the 12th March 1923

A THIRD FORM

In the Court of the Police Magistrate Sealdah

1 Complaint of Kalipada Dalal son of Late Babu Preo Nath Dalal Manager of Rai Saheb Benode Behari Sadhu, resident 22/3 Galiff Street P S Chitpore

2 Name of accused—

1 Bisweswar Kundu & others whose name to be given afterwards Son of Nil resident Phultola Khulna District

3 Brief description of occurrence—

That the complainant is the manager of Rai Saheb Benode Behari Sadhu who has got a pure mustard oil mill at Galiff Street and has duly registered No 1113/1924, marked as Binod Khanti Taila on the surface of the tin, and has got a large circulation The accused and others have fraudulently manufactured the said oil and counterfeited the Trade Mark and have been selling it The accused has been stocking a large quantity at Ultadingi Railway Station Godown of the said mark and selling in that name

4 Section of Law—483 I P C

5 Time of occurrence—2nd December 1926

6 Place of occurrence—Ultadingi Railway Godown Maniktola P S

7 Name of witness—1 Nakul Chandra Sadhu 2 Amarendra Nath Sadhu and others

(Sd) Illegible
Signature of Pleader

8 Remarks

Signature of Complainant by the pen of (Sd) Kalipada Dalal

CHAPTER VI

DEFENCE

The defence of an accused person has been dealt with in this chapter under the following heads —

1 Capacity of the accused persons to plead
2 Ignorance of Law
3 Ignorance or mistake of fact
4 Mens Rea
5 Knowledge of the accused persons
6 Charge
7 Proof
8 Written Statement
9 Defence Evidence
10 Pleading

1 Capacity of the accused persons to plead has been sub divided into the following heads —

(a) Foreigners
(b) Infants
(c) Insanity
(d) Drunkenness
(e) Compulsion or coercion
(f) Marriage

(a) Foreigners

The Penal Code and the Criminal Procedure Code do not apply in a foreign country or in other part of the British Empire to which the Code has no application The Penal Code and the Criminal Procedure Code have no application to the Tributory Mahal of Kheonjur which is on precisely the same footing in that respect as Mourbhanj The Full Bench Case of 8 Cal 95 has decided that the Penal Code and the Criminal Procedure Code have no application to Mourbhanj Certain persons officers of Maharajah of Kheonjur were charged before the Deputy Magistrate of Tajpore with certain offences under the Penal Code They were convicted and on appeal to the Sessions Judge the conviction was upheld It was found by the Sessions Judge that the scene of the occurrences which gave rise to the charges was within the Territory of Kheonjur It was held that the Deputy Magistrate and the Sessions Judge have no jurisdiction to try the case and the conviction must be set aside See 16 Cal 667

The trial of a British seaman for an offence committed on a British ship on the High Seas must be conducted under the Code of Criminal Procedure though the offence charged must be an offence under the English law 21 Cal ... A Presidency Magistrate has authority to charge, convict and sentence under the Indian Penal Code a person who has committed an offence on British ship during her voyage on the High Seas. The law applicable both as regards procedure and punishment is the Indian law ... Bom 636. But see 30 Cal. 457

(b) Infants

Nothing is an offence which is done by a child under seven years of age. An infant by presumption of law *Doli in capax* is not indictable. Nothing is an offence which is done by a child above seven years of age and under twelve who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion. Between the age of seven and that of twelve the child is governed by the doctrine of *Doli in capax* if it is proved that he has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct. If the contrary is proved the child is governed by the doctrine of *Malitia supplet aetatem*. A child under seven years of age cannot distinguish right from wrong. He cannot be punished even if he is caught redhanded. *Queen v. Lulloo Agradanini* 22 W. R. 27 (Cr.) In the last mentioned case, before entering on the trial of the case the objection was raised by the prisoner's counsel that she over seven and under twelve years of age has not attained sufficient maturity of understanding to judge of the nature and consequences of her conduct. It is therefore necessary to put the question to the Jury after asking the prisoner questions. Has the prisoner attained sufficient maturity of understanding to judge of the nature and the consequences of the act with the commission of which she is charged? The Jury through their foreman reply that in their opinion, the prisoner was aware of the nature of her act i.e., that it would do damage but that she was not aware she would be imprisoned in consequence. Under these circumstances the matter was referred to the High Court for a direction whether the trial of the case should be proceeded with. The following is the judgment delivered by the High Court —

We consider that the judge ought not to have made this reference but should have decided the matter for himself. But as the question has been put we proceed to answer it. The objection raised in this case is not, we think, of a preliminary character, but rather a matter of defence and a matter which may conveniently be considered with the other issues arising in the case. If the accused were a child under seven years of age the proof of that fact would be *ipso facto* an answer to the prosecution. But where the accused is above seven years of age and under twelve the incapacity to commit an offence only arises where the child has not attained sufficient

maturity etc and such non attainment would have apparently to be specially pleaded and proved like the incapacity of a person who at the time of doing an act charged as an offence was alleged to have been of unsound mind The Legislature is manifestly referring in section 83 I P C to an exceptional immaturity of intellect and we may observe that where the Consequences of his conduct are spoken of it is not apparently the penal consequences to the offender that are referred to but the natural consequences which flow from a voluntary act such for instance as that when fire is applied to an inflamable substance it will burn or that a heavy blow with an axe or a sword will cause death or grievous hurt We suggest therfore that the trial should proceed and that, if the prisoner s counsel or the Judge thinks it worth while the questions of capacity may be put with others to the Jury

(c) Insanity

Nothing is an offence which is done by a person who at the time of doing it by reason of unsoundness of mind is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law

There are three kinds of insanity —

(a) *A naticitate vel dementia naturalis*
(b) *Dementia accidentalis vel adventitia*
(c) *Dementia affectata*

The first kind of insane persons is the same as idiots from the time of his birth without any memory They cannot count—cannot tell the days of the week and the like This kind of unsoundness of mind passes without any lucid interval

The second class of insanity is manifested with lucid intervals

In the third class of cases the patient is unable to distinguish right from wrong, and as such he is incapable of knowing the nature of the act

In the House of Lords case of *Macnaghten* 10 C & F 200 certain questions were put to the Judges by the House and the answers given by them have settled the law on the point

The questions and answers have been summarised as follows —

Question 1 A man might know that he is doing something contrary to law but he committed the offence under the influence of an insane delusion —Is he indictable ?

Answer to question 1—He is punishable if he knew at the time of the commission that he was doing something contrary to law

Question 2—What are the questions which should be put to Jury ?

Answer to question 2—It may be clearly put to the Jury that the law presumes every person to be perfectly sane and can understand what he is doing unless the contrary is proved It is the bounden duty of defe

to prove that the prisoner was under the influence of the insane delusion at the time of the commission of the crime and could not understand what he is doing

Question 3—Can a person escape punishment if he commits the crime under the influence of an insane delusion ?

Answer to question 3—The answer will depend upon the nature of the delusion—if the delusion makes one to commit a crime but the gravity of the offence is aggravated not by delusion but by way of revenge, he is punishable I shall make it clear by an illustration An insane person A is under a delusion that he is defamed by B A kills B by way of revenge—A is liable to punishment If A is under the influence of delusion that he will be immediately killed by B unless A could kill B and A kills B for his imaginary selfpreservation, A is not liable

Question 4 Can a doctor witness be asked as to whether or not the accused committed the crime under the influence of delusion and whether or not he was conscious at the time of commission of the crime that he was doing contrary to law ?

Answer to question 4—This question cannot be asked inasmuch as they are the questions of fact to be determined upon evidence and not a pure question of science Illustration —One person brutally killed his two young children with a hatchet He is said to have been very fond of them, and the reason that he gives for the crime is that he was ill with ague and the children began to cry, and this vexed him. After killing them, he went to bed and fell asleep His manner was quiet when he was questioned and there was no attempt at concealment He had made a full confession, but has shown no signs of sorrow or remorse He had been ill with fever for several days but he does not seem to have been delirious His wife says He did not wander in his talk when the fever came on He was bewildered and unconscious" The evidence does not warrant a finding that the accused killed his children while delirious If he had been in a state of delirium he would have had no recollection of the circumstances and could have made no confession Though his wife describes him as unconscious when suffering from the fever, it is clear that he was quite unconscious of all that had occurred The Sessions Judge has considered the question whether the accused was, in the language of section 84 of the I. P. C "by reason of unsoundness of mind incapable of knowing the nature of the act" done by him or that he was "doing what is either wrong or contrary to law, and he has decided that question against the accused, and sentenced him to death Both the assessors were of opinion that the accused was not guilty One of them thought that he was suffering from fever and was ignorant of the nature of the act. The other says that he was not in possession of his senses, that he was ill that he was on good terms with his wife and children, and that no one but a lunatic would kill his own young children If the

question of the sanity of the accused were to be decided by such medical tests as are referred by Dr Taylor in Chapter LXIX of his Medical Jurisprudence (6th Ed) it would necessarily be answered in accordance with the assessors opinion The case is one of a class which is very fully discussed by Dr Taylor in which previously to the commission of the numerous acts there were no symptoms of intellectual aberration in the common meaning of the term Those acts were in some of the case directed against persons that closely connected with the homicides in blood and to whom they were tenderly attached Such crimes cannot in Dr Taylor s opinion be fairly or reasonably regarded as the acts of sane and responsible persons However well defined the theory of the English Law as to such cases may be its application to them in cases tried by juries has certainly not been always constant and invariable It will be necessary only to refer to three well known cases In *Reg v Greensmith* Med Chir Rev Vol XXVIII p 84 the accused were charged with the murder of his four children He was an affectionate father but having fallen into distressed circumstances he destroyed his children by strangling them in order as he said that they might not be turned into the streets The idea only came to him on the night of his perpetrating the crime He made a full confession the next day and he made no defence at the trial None of the witnesses had ever observed the slightest indication of intellectual insanity about him He was convicted and sentenced to death but on the active interference of Dr Blake and others was subsequently respited on the ground of insanity (Taylor 6th Ed p 926) A high legal authority is said to have remarked of this case that the man s mind was clearly deranged—the motive the mode of committing acts and his conduct all show an entire perversion of the understanding In *Greensmith s case* Med Chir Rev Vol XXVIII p 84 there was not the slightest proof of the existence of derangement of mind except in so far as it was inferred from the nature of the crime committed

It may be a dangerous doctrine Dr Taylor observes ' to adduce the crime or the mode of perpetrating it as evidence of insanity but such cases as these incontestably prove that there are some instances in which this is almost the only procurable evidence In *Reg v Brixey* Med Gaz Vol XXXVI pp 166 247 the prisoner was a quiet inoffensive girl a maid servant in a respectable family She had laboured under disordered menstruation and a short time before the occurrence had shown violence of temper about trivial domestic matters This was all the evidence of her alleged intellectual insanity —if we acc that which was furnished by the act of murder She procured a from the kitchen on some trivial pretence and while the nurse out of the room cut out the throat of her master s child (T p 926) She was perfectly conscious of the crime she had c

she appeared to treat the act as a crime and showed much anxiety to know whether she would be hanged or transported,' and she told her master what she had done That case satisfied three of the medical tests for detecting homicidal monomania laid down by Dr Taylor viz absence of motive of any attempt to escape and of any accomplice The prisoner was acquitted though there was no proof of the existence of intellectual insanity In *Reg v Burton* Huntingdon Summer Assizes 1848 the prisoner was convicted of the murder of his wife by cutting her throat He had no motive for the crime He had been previously unwell and restless at night There was no attempt at concealment and no expression of sorrow or remorse The medical witness attributed the act to a sudden homicidal impulse but the Judge dissented from this view because the excuse of an irresistible impulse co-existing with the full expression of reason would justify any crime whatever Dr Taylor remarks however on this case that it is highly probable that there was not full possession of reason No reasonable being would commit an act of this nature under the circumstances mentioned There appears to have been no stronger reason for convicting the prisoner than for convicting Brixey He was nevertheless found guilty while Brixey was acquitted He says further As in *Greensmith's case* Med Chir Rev Vol XXVIII p 84 there may have been delusion springing up in the mind suddenly and not revealed by the previous conduct or conversation of the accused As to *Brixey's case* Med Gaz vol XXXVI pp 166 247 he says The existence of insanity was a pure legal fiction based on the act committed and on the mode in which it was committed and the precedent furnished by it and another similar case *Reg v Stowell* Med Gaz vol XLVII 560 was not followed in *Reg v Burton* Huntingdon Summer Assizes 1884 For commonly a court of law will look for some clear and distinct proof of mental delusion or intellectual aberration existing previously to or at the time of the perpetration of the crime (Taylor page 927) (See also the charge of Baron Rolfe in *Reg v Layton* 4 Cox C C P 149 and the report of *Reg v La* 2 F & F, p 836) In dealing with all such cases as remarked in the defence of *Brixey's case* Med Gaz vol XXXVI pp 166 247, 'no general rules can be applied × × × Each case must be decided by the peculiar facts which accompany it' In comparing the present case then with three cases to which reference has been made it is to be noted that though a motive was assigned by the accused himself for the crime it was altogether insufficient and unreasonable—less reasonable than *Greensmith's case* Med Chir Rev vol XXVIII p 81 There was no malice on proved The idea came to the accused probably with more suddenness than to Greensmith As in all the three cases there was no precaution no concealment or attempt to escape no sorrow or remorse

In all the cases the act was done without the aid of any accomplice And according to the views of medical writers there would be in the present case, as in the English cases no responsibility attaching to the accused The above principle which has received judicial recognition should be applied in the present case, and these are substantially the same in the country and in England And if the legal test of responsibility in cases of unsoundness of mind prescribed by section 84 of the I P C be applied to the present case, it would be impossible for any Judge to acquit the accused, unless it could be held that the fever from which he was suffering had caused delirium (See the discussion on the subject in Chevers Medical Jurisprudence p 801) The fever had certainly made him irritable and sensitive to sound He was unconscious as his wife says His thoughts were confused, but there is not sufficient evidence to warrant that he was not conscious of the nature of the act And if he was conscious of its nature he must be presumed to have been conscious of its criminality The conviction recorded by the Sessions Judge under section 302 I P C was accordingly confirmed *Queen Empress v Lakshman Dagdu* I L R 10 Bom 512

A finding that the accused was of unsound mind at the time of commission of the offence is *per se* insufficient to bring the case within the provisions of S 84 I P C 144 I C 437

(d) **Drunkenness**

Nothing is an offence which is done by a person who at the time of doing it is by reason of intoxication incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law, provided that the thing which intoxicated him was administered to him without his knowledge or against his will A certain person wounded his uncle and another person with a sword most severely The two men were for a long time in the hospital and were for more than twenty days in severe bodily pain unable to follow their ordinary pursuits The prisoner pleads intoxication but there is no proof of this plea and if drunk at all he was voluntarily drunk Voluntary intoxication is not a valid plea for an offence 5 W R Cr p 79

In case where an act done is not an offence unless done with a particular knowledge or intent a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated unless the thing which intoxicated him was administered to him without his knowledge or against his will

Illustration —Certain Sessions Judge convicted several persons of murder and sentenced them to transportation for life It appears that some of the prisoners and the deceased went one morning to a grogshop and spent the entire day drinking At sunset they set out in an intoxicated state

to return home and on the road fell to quarrelling. The evidence shows that the prisoner Ram Sahay and the deceased began the squabble by first abusing and afterwards striking each other with lathis, but the quarrel soon became general and the deceased was attacked by all the prisoners and knocked down. He died the next morning, the cause of death (according to the doctor) being rupture of the spleen. Admitting all these facts the prisoner's crime does not amount to murder. Voluntary drunkenness does not of course palliate any offence but it is generally taken into account as throwing light on the question of intention and it can hardly be contended that there was any intention to kill in the case. Where all the parties to a fight are intoxicated the question of undue advantage cannot arise. In this case there seems to have been a sudden and general squabble and a sudden fight originated by Ram Sahay and the deceased himself in which eventually the other prisoners themselves heated by drinking took part. The High Court convicted the prisoners of culpable homicide not amounting to murder and sentenced them each to seven years R. I. *Queen v. Ram Sahay Bhur* Gap number of the Weekly Reporter Cr. p. 24.

In cases of voluntary drunkenness an intoxicated person shall be dealt with as if he had the same knowledge as he would have had if he had been sober. 12 Pang 115.

(e) **Compulsion or coercion**

Except murder and offences against the state punishable with death nothing is an offence which is done by a person who is compelled to do it by threats which at the time of doing it reasonably cause the apprehension that instant death to that person will otherwise be the consequence provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death place himself in the situation by which he became subject to such constraint. A person who of his own accord or by reason of a threat of being beaten joins a gang of dacoits knowing their character, is not entitled to the benefit of this exception on the ground of his having been compelled by his associates to do anything that is an offence to law. A person seized by a gang of dacoits and forced by threat of instant death, to do a thing which is an offence by law, for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder, he is entitled to the benefit of exception.

(f) **Marriage**

The following is the digest of the law in connection with marriage —

The offence for harbouring an offender under Ss. 211, 216 and 216A I. P. C. shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

A husband was killed by a rash and negligent act of certain accused person The widow claimed compensation It is doubtful whether the widow can claim compensation Because she has suffered no injury On the other hand it is generally urged as the support by the husband was taken away she suffered an injury See I L R 21 Mad 74 and 17 P L 1895 A wife cannot be convicted of a Criminal Breach of Trust regarding husband s property

A wife is not punishable for abetment of commission of an adultery.

The husband is not liable for committing bigamy amongst Hindus and Mahomedans but the wife is

A husband may be punished for committing rape upon his own wife

The following are the common offences relating to marriage —

(a) Kidnapping or abducting a woman to compel her to marry

(b) Forging a register of marriage

(c) Causing cohabitation by deceitfully inducing a belief of lawful marriage

(d) Performing marriage during the life time of husband

A Mahomedan marriage is immediately dissolved on one of the parties to that marriage renouncing the faith of Islam So where a Mahomedan married woman who renounces her religion and is then taken away by other persons they cannot be guilty under S 498 I P C 33 All 90, See also (1933) A L J 733

II Ignorance of law

The ignorance of law is no excuse Whether the party was really ignorant of the law and was so ignorant of the law that he had no knowledge of its provisions could scarcely be determined by any evidence accessible to others and for the purpose of discovering the cause of his ignorance (its reality being ascertained) it was incumbent upon the tribunal to unravel his previous history and to search his whole life for the elements of a just solution

III Ignorance or mistake of fact

Ignorantia facti doth excuse, for such an ignorance many times makes the act itself morally involuntary It is known in war, that it is the greatest offence for a soldier to kill or so much as to assault his general suppose then the inferior officer sets his watch, or sentinels and the general to try the vigilance or courage of his sentinels comes upon them in the night in the posture of an enemy, the sentinel strikes or shoots him taking him to be an enemy his ignorance of the person excuseth his offence

IV Mens Rea

A person cannot be convicted unless he committed the offence with *mens rea* or guilty mind Suppose a servant had the authority to appropriate towards his salary out of the collections made by him He misappro-

priated a large collection and converted the same to his own use Whether it is his civil liability to account or a commission of criminal breach of trust is to be decided by the factum of his guilty mind If he did that with a guilty mind he is punishable If he did that bonafide—he is merely liable to render an account

V Knowledge

It would be mere useless cruelty to hang a man for voluntarily causing the death of others by jumping from a sinking ship into an overloaded boat The suffering caused by the punishment is considered by itself an evil and ought to be inflicted only for the sake of some preponderating good But preponderating good indeed no good whatever, would be obtained by hanging a man for such an act

VI Charge

An accused is entitled to know with certainty and accuracy the exact value of the charge brought against him A Court should adhere to the language of the statute, as far as practicable when a charge is drawn up If misjoinder of charges is established the trial is illegal because held contrary to an express provision of the law relating to mode of trial No comprehensive formula of universal application can be stated to determine whether two or more acts constitute the same transaction but circumstances which must bear on the determination of the question in an individual case can be indicated, they are proximity of time unity or proximity of place and continuity of purpose or design

VII Proof

In order to justify the inference of guilt the inculpatory facts must be incompatible with the innocence of accused and incapability or explanation upon any other reasonable hypothesis than that of his guilt In criminal cases there can be no conviction unless guilt is established with very great clearness This presumption of innocence signifies no more than this that if the commission of a crime is directly in issue in any proceeding it must be proved beyond reasonable doubt, in other words, ' the whole doctrine when drawn out his first that a rule of procedure and of legal reasoning, *presumitur pro rea* that is *neganti* so that guilt must displace all reasonable doubt ' According to law administered in England facts similar to but not part of the same transaction are the main factor, the identity of its author But evidence of similar facts although in general, inadmissible to prove the main factor the connection of the parties therewith, is receivable after evidence *aliunde* on these points has been given to show the state of mind of the parties with regard to such fact, in other words evidence of similar facts may be received to prove a party's knowledge of the nature of the main fact or transaction or his intent with respect thereto In general whenever it is necessary to rebut, even by

anticipation, the defence of accident, mistake or other innocent condition of mind, evidence that the defendant has been concerned in a systematic course of conduct of the same specific kind as that in question and not of a different character and the facts tendered must also have been proximate in point of time to that in question are admissible It is the duty of the prosecution not so much to secure a conviction as to place all the available evidence in the case fairly and fully before the tribunal by which *alone the guilt or innocence of the accused is to be determined* *The proof* of the case against the prisoner depends for its support not upon the absence or want of any explanation on the part of the prisoner himself, but upon the positive affirmative evidence of his guilt that is given by the crown If there is a certain appearance made out against a party, it is involved by the evidence in a state of considerable suspicion, he is called upon for his own sake and his own safety, to state and to bring forward the circumstances whatever they may be which might reconcile such suspicious appearances with perfect innocence A man s guilt is to be established by proof of facts and not by proof of his character Such evidence might create a prejudice but not lead a step towards the substantiation of the guilt See) Cal 768 , 23 Cal 627

VIII Written statement

A written statement accepted from the accused does not take the place of evidence nor of such examination of the accused as is contemplated by the code Vide *Amrita Lall Hazra v King Emperor*, 21 C L J 331 It is better to explain matters during the examination of the accused by the court than to submit a written statement which have over and over been deprecated by the High Courts

IX Defence Evidence

The accused is not bound to adduce any evidence 8 Cal 125 Only when he relies upon some of exceptions referred to above or where the onus is upon him under the provisions of any law it is the bounden duty of the defence to prove his defence by adducing evidence on his behalf. The gap in the prosecution evidence cannot be filled up by the defence 26 Cal 49 28 Cal 689

X Pleading

When the accused is brought before the court the first question which ought to be decided is as to his capacity to plead The subject of his capacity to plead has been sufficiently discussed in the first part of this chapter After deciding the question as to his capacity to plead the next question to be decided is the question of jurisdiction

Want of Jurisdiction—Without saying yea or nay to the merits, case—the accused may plead want of jurisdiction—The question diction may arise in three ways The first is the absolute want of t

jurisdiction The second is where the tribunal is not competent to try the case (See s 346 Cr P C) The third is where the tribunal cannot pass sentence sufficiently severe (see 349 Cr P C) The first class of cases requires no illustration The third class of cases is also obvious having regard to the power of the tribunal I propose to cite two cases by way of illustration of the second class of cases The power of Magistrate to delegate the receiving of complaints is not equivalent to the power of the Local Government to invest with local jurisdiction and no magistrate can act who has not been legally invested with local jurisdiction The subsequent order of the Local Government has no retrospective effect 16 W R Cr p 79 This ruling has also decided an important point viz that a plea of want of jurisdiction may be taken in the High Court though not taken below The second illustration is the case of 6 Cal 83, where it has been held that no person can by waiver or consent enable a magistrate or a judge to try a case which he is disqualified to try by some circumstances not personal to the accused

The next question to be decided is whether or not the complaint discloses an offence under the Penal Law In English Law the plea is called demurrer Although in the same law the expression is obsolete so far as civil matters are concerned I know of no authority where it has been made so in connection with criminal cases Even if it be obsolete the English word demurrer is highly expressive and in that view of the case I have used the expression demurrer in this chapter

Demurrer—It is known as quashing in common parlance of the Indian courts Admitting the matters of fact alleged against the accused to be true the plea is that those facts do not constitute an offence under the Penal Law There is another class of demurrer when the charge framed is defective But in the latter case the proceeding cannot be quashed

In English Law there are some special pleas in bar viz Autrefois Acquit Autrefois convict Autrefois attaint and pardon In India S 403, Cr P C can be urged as special plea in bar

Special plea in bar—A person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall while such conviction or acquittal remains in force not be liable to be tried again for the same offence nor on the same facts for any other offence for which a different charge from the one made against him might have been made or for which he might have been convicted A person acquitted or convicted of an offence may be afterwords tried for any distinct offence for which a separate charge might have been made against him on the former trial A person convicted of any offence constituted by any act causing consequences which, together with such act constituted a different offence from that of which he was convicted may be afterwards tried for such last mentioned offence if the consequences had not happened or were not known to the court to have happened at the time when he was

convicted. A person acquitted or convicted of any offence constituted by any acts may notwithstanding such acquittal or conviction be subsequently charged with and tried for any other offence constituted by the same acts which he may have committed if the court by which he was first tried was not competent to try the offence with which he is subsequently charged. A is tried upon a charge of theft as a servant and acquitted. He cannot afterward while the acquittal remains in force be charged with theft as a servant or upon the same facts with theft simply or with criminal breach of trust. A is tried upon a charge of murder and acquitted. There is no charge of robbery but it appears from the facts that A committed robbery at the time when the murder was committed he may afterwards be charged with and tried for robbery. If an accused is pardoned he can plead it in bar to the indictment. See 19 All L J 1?

General Issue

Now comes the general issue viz guilty or not guilty upon the merits of the case. When the accused pleads not guilty it is incumbent upon the prosecution to prove his guilt. If it fails the accused is acquitted. If it succeeds the accused is convicted. The general issue is tried after the pleas in bar are disposed of. There are the various headings upon which the accused's pleading in a criminal case may be considered. In this country no written pleading of the accused is required. As has been stated the filing of written statement of the accused persons has over and over been deprecated by the High Courts of India. It is obligatory on the magistracy to examine the accused orally. There is all the difference in the world between a written statement presumably prepared almost certainly revised by the lawyers appearing for the defence and a statement made by the accused himself so that the magistrate can observe his demeanour and his manner while he makes it and come to his conclusions as to the value of his evidence. In this country an accused is not allowed to give evidence on his own behalf and in this view Sec 342 of the Cr P C has been held to be of cardinal importance vide *Promoth v King Emperor* 27 C W N 389

CHAPTER VII

CASE LAW ON THE PENAL LAW OF INDIA

Abetment

A person who knowingly aids in the disposal of stolen property falls under the clause third in S 107 I P C and is an accomplice 67 Mad L J 693

A person who instigates another to offer a bribe to a public servant is guilty of an abetment of the offence under S 161 I P C 152 I C 890

Any person who instigates a raider or leader of the raid in which death has been caused is guilty of abetment of murder 35 Cr L J 334

In order to succeed in a prosecution for abetment of bigamy the prosecution must prove that the person who is alleged to have committed bigamy was married lawfully once and has gone through a second marriage ceremony Thirdly that the person alleged to have abetted the bigamy knew when he arranged or assisted at the second marriage that the person who was remarried had contracted a valid first marriage or wife of the first marriage was still living Where the first marriage is not a valid marriage or has been repudiated by a party to it a conviction for abetment of bigamy cannot be sustained (1934) A L J 387

When *two* peoples attack another armed with Das and there is evidence that one of them announced his intention of killing, both these persons are liable for the act committed by one of them under S 34 Penal Code, and even if S 34 does not apply section 114 will be applicable 35 Cr L J 905

In order to bring a case within section 114 I P C the abetment must be complete apart from the presence of the abettor at the time of the commission of the offence In other words the act of abetment must have taken place at a time prior to the actual commission of the offence 36 P L R 37

Act done in furtherance of common design

Section 34 of the Indian Penal Code provides that each is liable for acts done in furtherance of common design by several persons Borendra Kumar Ghose was charged under section 302 I P C with the murder of Sankharitola Postmaster in the city of Calcutta At the trial the evidence showed that while the Post master was in his office counting money, these men of whom the appellant was one, fired pistols at him after having called upon him to hand over the money, he was hit in two places and

died The trial Judge directed the Jury that if they were satisfied that the postmaster was killed in furtherance of common intention of all three men then the appellant was guilty of murder, whether he fired the fatal shot or not It was held that the direction was correct Their Lordships of the Judicial Committee further held that the words in furtherance of common intention of all introduced as an essential part of the section the element of a common intention prescribing the condition under which each might be criminally liable when there are several actors 52 I A 40 When more persons than one assault another the result of which is the death of that man it is not necessary to prove which particular wound was caused by which particular accused and who inflicted the fatal wound Such evidence in most cases will not be available S 34 I P C has been enacted to prevent miscarriage of justice in such cases and all are responsible for the death if assault is made in furtherance of common intention 132 I C 591 The mere presence of a person at the time of the commission of an offence by confederates is not in itself sufficient to bring his case within the purview of S 34 I P C A I R 1934 Lah 813

Act when includes omission—

Under S 32 I P C an omission is no doubt included in an act but it is incumbent that such an omission must be illegal and the onus lies on the prosecution to show that the omission which is being treated as an act was either an offence or was prohibited by land or was one which furnished grounds for a civil action An inaction which is not shown to be illegal would never amount to an act under I P C A I R 1934 Lah 813 One Bhandri reported to the Police patil and to the two constables that her neighbour Mahadu had committed theft of her property during her absence from her house Mahadu was thereupon arrested and remained in close custody His house was searched after 11 p m but no part of the stolen property was found Then ashes were spread on the ground and he was made to walk or stand on them Accused Chunilal beat him with his fist and kicked him with his boot for the purpose of extorting a confession But no confession can be extorted from him Accused Latifkhan who was present at the beating did not remonstrate with the accused Chunilal or prevent him from offering violence to Mahadu Mahadu remained a prisoner on his verandah guarded by accused Latifkhan Within a short *time after the beating Mahadu died A policeman who stands by* acquiescing in an assault on a prisoner committed by another police man for the purpose of extorting a confession is guilty of abetment The maxim *respondent superior* has no application in such a case Where the law imposes a duty to act on a person his illegal omission to act renders him liable to punishment 30 Pom 394

Communism—

The offence of criminal conspiracy is complete as soon as two or more persons agree to do or cause to be done an illegal act or an act which is not illegal by illegal means It is immaterial whether the illegal act is the ultimate object of such an agreement or is merely incidental to that object For the purpose of sec 121A Penal Code, it is not necessary that any act or illegal omission shall take place in pursuance of the conspiracy The agreement in itself is enough to constitute the offence Where the accused are charged under S 121A, Penal Code it is enough for the prosecution to prove that there was a conspiracy to deprive the King Emperor of the Sovereignty of British India It is not necessary to show further that the conspirators were conspiring for such deprivation to take place within the lifetime of His Majesty the King Emperor Consequently the question whether the conspiracy is expected to succeed in the life time of His Majesty the King Emperor or that of his successor is wholly immaterial

The members of the communist party of India who subscribe to the programme of the Communist International form a revolutionary body with the professed object of overthrowing the present order of society and bringing about the complete independence of India by means of armed uprisings of the proletariat including the workers and the peasants Their object is not a distant aim to be realised in the unknown far off future but it is either immediate object and all those persons who have formed themselves into a party and put before themselves such a programme and agreed to give effect to it to the best of their ability have conspired to deprive His Majesty the King of his Sovereignty of British India and they are liable to conviction under S 121A Penal Code

The communist party of Great Britain is a section of the Communist International and is bound by its decisions Consequently members of the Communist party of Great Britain who were sent to India to carry out the same programme and who carried on their activities in India and formed various organisations in furtherance of that programme are liable to the same extent if not to a greater extent as the members of the Communist Party of India for conviction for an offence under S 121A

The mere holding of communist beliefs or doctrines is not punishable *per se* A theoretical communist or a student of communism cannot be said to be guilty of an offence And if a communist were to work individually in furtherance of his belief he would not be guilty of conspiracy

Where certain persons do not belong to any party definitely committed by its constitution to adopting the programme of Communist Inter-

national and do not even believe in Communism with its doctrine of the inevitable use of force, they cannot be presumed to have entered into a conspiracy with certain communists for depriving His Majesty the King Emperor of his sovereignty of British India merely if they are proved to have taken part in Trade Union activities or to have made seditious speeches In the case of such persons something more than taking part in non communist workers and peasants parties and in Trade Unions or making seditious speeches will be required to make liable under S 121 A

In a criminal trial it is not necessary that the entire evidence for the prosecution must be produced before the committing Magistrate and it cannot be said that the Magistrate has no option to postpone the recording of such evidence All that ss 208 and 210 Cr P Code imply is that the Magistrate should record all the evidence for the prosecution which the complainant considers it necessary to produce The prosecution can place before the court all the evidence on which they wish to rely but after evidence has been taken which is sufficient to make out a *prima facie* case it is not necessary to call further evidence Similarly if there is a mass of evidence tending to prove the same point it is not necessary that all such evidence should be produced in the Magistrate s court before the charge is framed Notice of all evidence to be produced in the Sessions Court ought however to be given to the accused before the trial otherwise he would be prejudiced The mere fact that some evidence is not produced until proceedings in the court of Sessions can in no way prejudice the accused if he has notice of it *Q vs Hayfeld* (1) *Q vs Stanton* (2) *Q vs Ahmad* (3) and *E vs Kunwar Jaswant* (4) explained and distinguished

Where an accused puts in a written statement in the trial of a warrant case he should be allowed to file it in Court and thus much time can be saved if such a written statement were accepted instead of allowing the accused to read it in extenso in court and to have it recorded as he reads it *E vs Arisuya* (6)

Section 289 Cr P Code has to be read in conjunction with the provisions of s 342 of the Code which makes it the duty of the court for the purpose of enabling the accused to explain any evidence against him to question him generally on the case before he is called for his defence But the questioning of the accused referred to in the section is not meant to be a lengthy cross examination as regards all evidence produced by the prosecution

The length of trial can be shortened if the accused also were to exercise a proper discretion in producing defence witnesses

A judgment has not to be a resume of the entire evidence or a

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(1) 14 A 212 (2) 14 A 521 (3) 20 A 264 (4) 25 Cr L J 624 (5) 15A (6) A W N (1903) 1

discussion of the relevancy of all the evidence A court is entitled to select such evidence as it considers important and sufficient to prove the point for consideration

The execution of authorship of document is a question of fact and may be proved like any other fact Before the provision of Sec 10 of Evidence Act can be evoked, it has to be established from independent evidence that there is reasonable ground to believe that two or more persons have conspired together to commit an offence

In S 10 anything said' would include the statement made speeches delivered or declaration made 'anything done" must be some act done and not merely the intention or knowledge of the person Anything written would include (1) manuscript whether signed or unsigned written by the person and (2) matter transcribed by him on a typewriter

But a document of which the writer is not known found in the possession of a conspirator would not by itself be admissible for the purpose of proving the truth of its contents as against the other accused The fact of possession would be evidence to show that the conspirator in whose possession it is found has received and preserved it

S 11 of Evidence Act does not make all documents which make the existence or non existence of relevant fact probable or improbable relevant The expression highly probable or improbable' is insignificant It indicates that the connection between facts in issue and collateral fact or sought to be proved must be immediate as to render the co-existence of the two highly probable

Copies of printed newspapers containing an account of some proceedings found in possession of one accused are evidence of the fact of the publication of such an account in that paper, but are not by themselves evidence of the truth of the facts stated therein unless in connection with other facts they make the existence or non existence of the facts mentioned highly probable or improbable

The opinion of an expert to the effect that one document has been type written on the same machine as another document is not admissible under s 45 of the Evidence Act It is for the legislature to consider whether the section should not be amended but as it stands it does not include such expert opinion The court may ask the witness to explain points in favour of the view whether the two documents have or have not been typewritten on the same machine but must come to its own conclusion and not treat such assistance as an expert opinion—a relevent fact in itself

The identity of the machine on which two letters have been type written would not by itself show that the writer of the two is one and the same person But such a conclusion may be drawn from additional evidence e g internal evidence afforded by the document or the external circumstances, or the continuity of the correspondence passing between the sender and the addressee

Even in a criminal case where secondary evidence has been adduced in place of primary evidence, the provisions of ss 65 and 66 of the Evidence Act are applicable and must be complied with before such secondary evidence is admitted

In order to establish that the accused were in correspondence with a particular individual in a foreign place it is not incumbent upon the prosecution to establish that any of the letters were in fact written by any particular individual of that name It is enough to show that some person living in the foreign place was in conspiracy with the accused and correspondence was passing between them

The theory of punishment is based upon (a) the pretention of the public , (b) the prevention of crime , (c) the reformation of the offender

When a seditious appeal is made to illiterate and ignorant workers and peasants organised propaganda and work carried on among them, particularly during strikes and when inflamatory speeches are made such conduct should not be looked upon merely with contempt on the ground of its futility but the court should take a serious view of the offences of conspiracy committed by the accused But in passing sentence the court should consider the period which the accused have already spent in jail in the course of the proceedings and in the case of a lengthy trial the sentences passed on the accused should be reduced on that account

In the case of political offences arising out of the beliefs of the accused, severe sentences defeat their object In practice such sentences confirm the offender in their beliefs and create other offenders thus increasing the evil and the danger to the public vide 34 Cr L J 967

Conspiracy

In the absence of a proper complaint or charge under S 120 B I P C a conviction under the section is illegal 13 Pat 729

It is not necessary in a case of criminal conspiracy for one conspirator to be aware of all the acts of his fellow conspirators committed in pursuance of the conspiracy 151 I C 494

Proof of one offence of dacoity or robbery is not sufficient to support a charge of conspiring to commit robberies and dacoities 148 I C 929

Where the accused have conspired to obtain money from public by subtle means and devices and false pretences acts committed with this object or to cloak the criminal actions are offences committed in pursuance of the conspiracy and the charges for the different offences may be tried together 28 S L R 119

It is perfectly true that it is upon the prosecution to prove a case of conspiracy Nevertheless where groups of persons are formed in constant communication and each group appears to have a single form of activity which is characteristic of the group communication between the two must receive the interpretation what the common object of the two groups is

The word illegal is applicable to everything which is an offence or which is prohibited by law or which furnishes a ground for civil action and a person is said to be legally bound to do whatever it is illegal in him to omit In a case where an accused person placed before his departmental head a false return of lands in his enjoyment and also stated falsely to the same effect in a Revenue Enquiry It was held that no offence was committed as the accused did not act illegally He was no doubt guilty departmentally but the test is whether or not was he legally bound to furnish such information? If not he is not indictable If he is bound he is certainly guilty But in the case in question it appears that he was not bound Therefore the man was acquitted The crux of the question is that a breach of the departmental duty is not punishable under the Indian Penal Code 14 Mad 481

Murder—

Accused who was very drunk but could walk with a staggering gait and knew what he was about stated his intention to cut a man whom he supposed to be his enemy and went out deliberately arming himself with a da shouting out abuses and also his intention to cut his enemy He met on his way the deceased who tried to pacify the accused and to induce him to go home But the accused was quarrelsome and not only threatened to cut the deceased but retreated and cut him on his head and the persons who came to assist the deceased

Held that the facts showed that the accused was capable of forming an intention to inflict injuries with his da and must be presumed to have intended the natural consequences of this act and was therefore guilty of murder and that under the circumstances there was no extenuating circumstance 152 I C 1051

S 299 I P Code clearly defines the offence of culpable homicide Culpable homicide may not amount to murder (a) Where though the evidence is sufficient to constitute murder one or more of the exceptions to S 300 apply or (b) Where the decree of *mens rea* specified under S 299 is present but not the degrees referred to by S 300 152 I C 271

The distinction between an offence of culpable homicide under S 299 I P Code, and that of murder under S 302, though fine is clear Culpable homicide is murder not merely if the act causing death is done with intent to cause death, but also in cases where the act causing death is done with the intention of causing such bodily injury as the offender knew to be likely to cause death and also if the act is done with the intention of causing bodily injury which is sufficient in the ordinary course of nature to cause death Where blows are inflicted on the abdomen with a gandasa or chopper the offence is merely culpable homicide and not murder 35 Cr L J 1113

If a man who is armed with a deadly weapon like a sela, thrusts the

weapon into the chest of his victim and causes instantaneous death he can have only one intention namely, intention to murder 35 P L R 715

In case of alleged poisoning the two material questions requiring determination are firstly did the deceased die of the poison ? And secondly, had the poison been administered to the deceased by the accused ? 35 Cr L J 700

The accused knew that his sister had gone to meet the deceased with whom she had illicit connection and deliberately went to the spot with the intention of killing the culprit if he found him with his sister Held that the provocation was no doubt grave but not sudden The accused expected to find at the spot before he left his house what he afterwards found there There was therefore no suddenness about the discovery of his sister in the company of the deceased and the accused could not be said to have been deprived of the power of self control On the other hand he sought the provocation by deliberately going to the scene of the meeting The test wether a person had acted under grave and sudden provocation is whether the provocation given was in the circumstances of the case likely to cause a normal reasonable man to lose control of himself to the extent of inflicting the injury or injuries that he did inflict A L R 1934 Lah 527

Accused complained to P W 6 to the effect that the deceased had gone to his house one evening knocked at the door pushed his wife and attempted to seduce her while he (accused) was absent at a shandy and asked P W 6 to convene a panchayat The panchayat was convened and the accused laid his complaint The deceased denied the charge the accused's wife who was sent for stated that somebody had knocked at her door the previous night but that on opening it she found nobody—not found the deceased The deceased then asked accused why he had come with a false complaint on which the accused abused him in filthy language The deceased returned the abuse and caught hold of the accused's tuft of hair and also gave him a blow with his fist on the accused's back Both of them closed with each other the accused also catching hold of the deceased's tuft of hair Before they could be separated by some persons who approached the deceased fell down saying that he was stabbed by the accused who ran away The medical evidence showed that the stab wound caused the death Held that under the circumstances the offence fell under the first part of S 304 I P C Code being covered by exception 4 to S 300 I P Code 1934 M W N 1355

Where there is a free fight between two persons no right of private defence accrues to either of them 151 I C 469

The accused and the deceased exchanged abuses and grappled with each other and during the struggle the accused suddenly took out his knife and stabbed the deceased under the armpit piercing the lung and causing death Motive for murder was not clearly established

In the district to which the parties belonged knives were commonly carried Held the accused having suddenly and without realising the consequences stabbed the deceased in the heat of passion the offence fell under Excep 4 to S 300 I P Code 150 I C 640

Where the accused expected to find the deceased to come to a particular place to prosecute his intrigue with a girl who was betrothed to one of them and were lying in wait, armed with spears and intended to murder him if he did, the provocation is not sudden and the accused are not deprived of their power of self control the accused in such a case are guilty of murder But the fact that the deceased had given provocation to the accused by persisting in his intrigue with the girl who was betrothed to one of them would justify not giving capital sentence 7 P R 1890 (Cr) 151 I C 1012

Where the assault was entirely unpremeditated and was committed by an impulsive young man as a result of sudden excitement, where neither of the blows was aimed at a vital part of the body and where it could not have been present to the mind of the accused that a stab on the frontal prominence of the hip would penetrate the abdominal cavity

Held, that the accused had no intention to cause death or such bodily injury as was likely to cause death and that at the most the accused can be burdened with the knowledge that his act was likely to cause death Conviction under S 304 latter part is proper 151 I C 469

Where the case is on the borderline between murder and culpable homicide not amounting to murder accused is entitled to the benefit of reasonable doubt and he can be convicted only under S 304 35 Cr L J 1112

Where there was a fight at the accused s house in which he, his brothers and the deceasesd took part and in that drunken brawl the accused gave the deceased only one blow which ultimately resulted in the death

Held, that no offence under S 302 or S. 304 but one under S 32[illegible] was committed 151 I C 760

The mere fact that the body of the murdered person has not been found or is not forthcoming, is not a ground for refusing to convict an accused person of murder The strongest possible evidence as to fact of the murder should be insisted on before the accused is convicted 152 I C 376

Where the medical evidence does not support that the deceased met with a violent death no charge of murder can be brought home to any one 35 Cr L J. 992.

In a trial under S 302 the medical evidence was that the injuries were not necessarily sufficient in the ordinary course of events to cause the death and that the death was due to meningitis and concussion of the brain but they had no direct connexion with the injuries caused

Held, that the offence fell under S 326 and not under S 302 151 I C 238

Accused were comparatively young man one being 20 years of age and the other 22, but the murder was deliberate and cruel and there were no extenuating circumstances which would justify reducing the sentence

Held, that capital sentence was proper 148 I C 475

It is inevitable that a brutal murder should go unpunished where satisfactory evidence is not forthcoming as to who were the guilty parties 148 I C 259

Five persons took part in beating one T and another F which resulted in F sustaining grievous hurt, and T dying five days afterwards There was no evidence of motive for the beating Medical evidence showed that T had severe injuries on the head and one injury fracturing the ulna bone, the rest of the injuries being simple and that F had one grievous and rest all simple

Held that the conviction under S 302-49 for causing death of T was wrong Proper conviction was under S 325 as regards both T and F with conviction under S 147 151 I C 39

Where from the evidence it appeared to be not unlikely that the accused inflicted the injury without any premeditation and in a sudden fight in heat of passion having also acted in selfdefence in a sudden fight in consequence of an attack made upon him by deceased himself

Held that the accused was entitled to the benefit of doubt As regards the charge under S 302 and that the conviction should be altered into one under the latter part of S 304 11 Mys L J 412

Where several wounds are caused on the head and neck with a sharp cutting weapon such as hatchet they are inflicted with intention of causing death and the crime is murder 152 I C 1032

The ordinary rule in Criminal cases is that intention is to be inferred from a person s acts Where a man strikes another on the head with a sharp instrument with such force as to penetrate to the brain the only possible intention that can be inferred is an intention to cause an injury which the accused knew would be likely and indeed bound to cause death 41 B 27 disapproved 36 Bom L R 210

Where murder is committed in a house with the object of stealing the valuables belonging to the deceased if any of accused persons are guilty, they would certainly be guilty of murder and not only of an offence under S 460 I P Code

Where eight persons deliberately attack another who was alone and unarmed and even after he has been knocked the assailants continue to beat him with lathies each of the assailants is guilty of murder under S 302, I P Code 35 Cr L J 1496

The wound on the head of deceased was inflicted with an axe on the right side of the top of the head. There was a clean—cut fracture

of the skull along the whole length of the wound nearly 2 inches and penetrating to the depth of about 2 inches right into the brain

Held that accused was guilty of murder 152 I C 636

In the case of a trial for murder, it is not the duty of prosecution to prove an adequate motive in every case 151 I C 238

In all cases where death results as results of blows given one head with a blunt weapon such as a stick, the intention of the assailant must be judged by the circumstances under which the blows were delivered the weapon used the force with which the blows were inflicted and the extent of injuries caused Accused struck the deceased two blows on the head with a stick It was found that though accused had a right of private defence he had exceeded that right, further neither the accused nor any body else thought that the deceased was seriously injured

Held intention to cause death or an injury sufficient in the ordinary course of nature to cause death cannot be imputed to the application and that he was guilty only of culpable homicide not amounting to murder 150 I C 590

A custom among the Baluchis of killing for unchastity cannot by taken into consideration in the mitigation of sentence 28 S L R 279

Held, that the mere fact that the accused was suffering the pangs of jealousy which drove him to commit the murder did not furnish any ground for saying that he received any provocation at all of any kind The fact that the deceased fell in love with same woman with whom accused was in love and the fact that deceased was not prepared to give up his illicit connexion with the woman at the bidding of accused could hardly be said to conduct which gave provocation to the accused

Where the accused was disgusted with the deceased and wanted to break off her connection with him and she was being maltreated by her husband in order that she might give up her connection with the deceased while the deceased persisted in carrying on sexual intercourse with her even when she was ailing and as a result of harrassment to which she was subjected by the deceased she made up her mind to get rid of him by poisoning him

Held that in the above circumstances it was not a fit case in which the extreme penalty permissible under the law should be exacted 152 I C. 1077

An inhuman and horrible murder was perpetrated in cold blood by accused, a boy of 15 or 16

Held that however horrible the crime a boy of 15 or 16 years should not be hanged, that at the age of 15 and 16 when a boy had just come to the age of puberty he may do many things then which he would never dream of doing when he was older and that sentence of death should be remitted to transportation for life

Held further, that it was inadvisable for a boy of this age to be kept in an ordinary jail 1934 A L J 143

Where a boy of 17 was engaged in a murder under the influence of people very much older than himself there is justification for a sentance of transportation for life inspite of the fact that he took an actual part himself in the murder 36 P L R 40

Accused aged 18 or 19 made indecent overtures to the deceased and asked him to have unnatural intercourse which the latter refused Accused though rebuked by the mother of the deceased and his own grand father still molested the deceased and on the deceased's refusal to allow accused to play with him, accused got a chhuri and gave several stabs causing serious injuries to the deceased

Held that in view of the most objectionable motive which accused had and the number of injuries caused and the nature of weapon used death sentence was quite proper even though accused was a youth of 18 or 19 148 I C 191

The accused belonged to an aboriginal tribe The deceased on the day of the occurrence presented a piece of roti to the only child of the accused who was about a year old in presence of both the parents After the visitor had left, the child though previously perfectly well and playing about began to be ill after having eaten the bread given to it and eventually died about the time of the night meal The accused believing his only child to have been poisoned by their visitor took his balua proceeded to the deceased's house and without a word dealt her at least five violent blows with the balua one at least of which was necessarily fatal

Held, that the accused beset himself with grief and having connected his bereavement with the gift of bread by the deceased rushed away before he had any time to think and committed the crime The reason for passing the lesser sentence was express and adequate A I R 1930 Pat 247, 150 I C 543

Accused challenged the deceased to fight with him and on the refusal of latter pushed his head and asked him to assault the accused Thereupon the deceased gave him a blow Immediately the accused drew a knife and inflicted several fatal wounds as a result of which deceased died immediately

Held that the accused was guilty of murder as an intention to cause death could be inferred from the nature of the injuries but that as the parties were drunk and as the first blow was struck by the deceased the lesser penalty should be imposed 149 I C 1176

Drunkenness though voluntary can be taken into consideration as an extenuating circumstance justifying the imposition of the lesser penalty for murder It cannot be laid down that in no case of a conviction for murder can voluntary drunkenness amount to an extenuating

circumstance for that would be fettering the discretion of court in an unjustifiable way Each case must be treated on its merits according to the proved facts 12 Rang 445

Where some persons concerned in an affray had absconded some had died during the injury and the remaining persons stood their trial and it had not been established that any of the applicants was definitely responsible for causing the death nor could it also be said with any certainty whether any of the accused was armed with a sharp edged weapon or whether the sharp edged weapons were wielded by the absconders or persons who died during the course of the inquiry, and where the fact that no incised grievous wound was inflicted on the head or any vital part of the body of any of the rival groups indicated that the persons armed with sharp edged weapons did not intend to cause death or such bodily injury as was likely to cause death

Held that the offence committed by accused falls under S 304 latter part 151 I C 443

If four persons struck the deceased together and it could not be known whose lathi caused the fatal injury still they can all be held guilty under S 304 I P Code 151 I C 364

One B caused the fracture of the skull which resulted in the death of D M S and V came up after B had knocked D down with the fatal blow on the head M S and V dragged the fallen D some distance and M and S held his leg while V thrust a lathi into the anus of the deceased which resulted in dilatation of the anus and abrasion of the rectum

Held that M S and V could not be guilty of the offence of culpable homicide not amounting to murder Their offence came within the purview of S 325 117 I C 731

Premeditation is not a necessary ingredient of S 304 I P Code Therefore mere absence of specific evidence that the accused had come prepared to cause death is no ground for convicting the accused under that section 151 I C 364

The accused actually caught the deceased (his married sister) in the act of sexual intercourse with a stranger He was enraged and gave a number of blows which caused her death

Held the circumstances of the case justified a reduction of sentence from five years rigorous imprisonment to three years 151 I C 898

Where the accused struck the deceased twice in quick succession on the head with a stick causing two injuries on the front part of the left parietal region and the right temporal region respectively he is guilty under S 304 I P C but where the case is not one of deliberate assault and the accused had some sort of provocation from the deceased before he

assaulted him the sentence of transportation for life is excessive (sentence reduced to seven years rigorous imprisonment) 150 I C 636

The accused inflicted a blow on the head of the victim with his clang with the result that the wounded man fell down on the ground and became unconscious In the afternoon he expired while he was being taken to hospital

Held, that the offence was one of culpable homicide not amounting to murder 35 P L R 371

A conviction under S 34 does not imply that each of the persons convicted thereunder has been guilty of a substantive offence When a charge is made of an offence under S 149, it will not be illegal to convict the accused of that offence read with S 34 I P Code, if no prejudice is occasioned to the accused persons in their defence 1934 M W N 241

A person driving a motor car is under duty to control that car, he is *prima facie* guilty of negligence if the car leaves the road and dashes headlong into a tree and it is for the person driving the car to explain the circumstances under which the car came to leave the load Those circumstances may be beyond control and may exculpate him but in the absence of such circumstances the fact that the car left the load is evidence of negligence on the part of driver Accused guilty under S 304 A I P C 35 Cr L J 691

The law confers on the court a very wide discretion in the matter of punishment and it is not necessary to inflict a sentence of imprisonment on a person who on account of family discord destitution loss of a near relation or other cause of a like nature overcomes the instinct of self preservation and decides to take his life In such a case the accused should be either released on probation of good conduct or sentenced to a fine The rule should apply with greater force to the case of a woman who attempts to commit suicide under similar circumstance 35 P L R 439

Offence committed by more than one person

When two people attack another armed with das and there is evidence that one of them announced his intention of killing both these persons are liable for the act connected by one of them either under S 34 I P C or under S 114 I P C 35 Cr L J 905 Where the intention of the two persons was only to cause simple hurt and the common intention of the party was extended only to the causing of simple hurt the mere fact that one of the servant of one of the said two persons exceeded the common intention by causing grievous hurt cannot make those persons guilty of causing grievous hurt 35 Cr L J 410 There was enmity between the two factions who resided in one village Some members of one faction went to the school in the village armed with sticks with the intention of causing injuries to three men of the other faction who had already gone there The partisans of these three when they learnt of this came armed with

hatchets and spears They were six or seven in numbers whereas the opponents were five Three persons who had already gone before joined their partisans and attacked the five members of the other faction with the result that one of the latter group received a spear thrust and died on the spot It was held that the plea of private defence was not available to the person thrusting the spear in the body of the deceased and the partisans of the person dealing the spear thrust or any of them present at the assault could be convicted of murder, even if it be held that he did not strike the deceased 151 I C 857 Where the two accused who were armed with guns entered a shop for the purpose of committing robbery but had to retreat and were pursued and one of the pursuers was killed by one of the shots fired by one of them It was held both the accused could be convicted under S 302 I P C 61 Cal 190

Previous conviction —

S 75 I P C should not be applied in the case of an accused person who has only one previous conviction and that too about 10 years before 1934 Cr Cases 1405 An order under S 110 Cr P Code cannot be correctly described as a conviction so as to bring an offender within the ambit of section 75 I P C 1934 Cr Cases 1405 In order to prove the previous convictions standing against an accused person for the purposes of S 75 of the I P C it is necessary that the provisions of law as contained in S 511 Cr P Code should be observed where before the magistrate framed the charge in which the previous convictions were mentioned in detail there was not an iota of evidence on the record to justify their inclusion in the charge and after the framing of the charge and at the time of explaining it to the accused the magistrate questioned him as to whether he had those convictions against him the procedure adopted was not sanctioned by law 151 I C 719 In order to support a charge of previous convictions there should be on the record a copy of some judgment or extract from a judgment or some other documentary evidence of the fact of such previous conviction Otherwise the examination by a magistrate of the accused in respect of such previous convictions is without legal warrant or justification 35 P L R 697

Private defence —

The mere fact that Subinspector is dressed up in his uniform does not justify one in saying that he was acting in good faith when as a matter of fact he was acting in entire bad faith and in the most illegal and reprehensible manner A I R 1934 Oudh 124

Where the warrant the execution of which by the process server was resisted is illegal because of its having been issued by a court which had no power under law to issue it no offence under S 186 I P C is established because the essential ingredient is absent The

question as to whether there was a right of private defence under section 99 I P C is irrelevant and does not arise unless and until the essential ingredients of an offence under S 186 are made out 152 I C 481

Where the accused while resisting the attack of a man armed with blunt weapon happens to hit him with a stick on the head rather harder than perhaps he intended to have done and thus kill him he cannot be said to be exceeding his right of self defence In the excitement and confusion of the moment it is not to be expected that an average man would weigh the means that he intends to adopt at the spur of the moment for self-defence in golden scales though the counter attack should not be out of all proportion to the force employed in the original attack 35 P L R 725

The right of private defence of the body of the accused s wife extends to the voluntary causing of death where the offence which occasioned the exercise of the right was an assault with the intention of committing rape 35 P L R 659

B armed with weapon broke the door and rushed into A's hut and assaulted A s pregnant wife violently A came in with an axe struck B several blows but when B fell down his skull was fractured A gave him water and allowed him to go home whence he was carried to hospital but died on the way It was held that A was justified in protecting his wife and had no intention to murder B and that he had not abused the right of private defence and therefore could not be convicted either under S 302 or S 304 I P C A I R 1931 Pat 388

It is difficult to lay down any hard and fast rule to determine the amount of harm which is legally justifiable or permissible in the exercise of the right of private defence Every case is to be considered on its own facts and before giving any accused person the benefit of the right of private defence a court of law must be satisfied that his case is clearly covered by the general exception If a person is armed with a hatchet and disables his adversary by the infliction of one blow on his head, it cannot be urged that he has any reasonable apprehension left that if he did not repeat his blow grievous hurt will be the consequence 35 P L R 783

Where both parties deliberately engaged themselves in a mutual fight neither of them was entitled to a right of private defence and it was immaterial as to who gave the first blow in such a fight 35 P L R 673

When the accused continued to chase a thief after he had thrown away the stolen property and assaulted and killed him the assault was committed not with a view to recover the property but to capture the thief which is not contemplated by S 105 I P C and the accused is not protected by the right of private defence of his property 35 P L R 641

Where two unlawful assemblies fight with each other there can be question of private defence and every body who is proved to have

part on the fight is liable to be punished for the offences committed by him 35 Cr L J 1469 S 97 I P C gives a right of private defence of property against an act which amounts *inter alia* to an offence of criminal trespass or mischief If the act of mischief has already begun there is more than an apprehension of danger to the property and the right of private defence has come into existence If the right of private defence has already arisen it is not expected that a person entitled to exercise it should have recourse to the permission of the public authorities He is entitled to defend it himself 35 Cr L J 730 The right of private defence is available if the accused was acting in the lawful exercise of his right over property at the time when he was attacked Where however, the accused was not doing a lawful act when he was attacked but he was himself the aggressor and commenced beating others he cannot invoke the right of private defence 35 Cr L J 801 The entire jote of a tenant was purchased by the landlord at a sale in execution of a rent decree and possession was delivered, but despite the sale the tenant and his sons grew paddy on three of the plots in the jotes and the crops were standing at the date of the delivery Subsequently the tenant and his sons cut and removed the paddy on one of the plots and stored the same in a Khamar adjoining the home stead Thereupon the manager of the landlord had the crops on the other two plots reaped and removed to the landlord s cutchery, and proceeded to the house of the tenant to recover the paddy While so engaged the manager who was unarmed and his cartmen were set upon by tenant and his sons The cartmen after being assaulted ran away The manager was thrown to the ground tied hand and foot and kept under ground for several hours It was held that the tenant had no right of private defence of property 38 C W N 854 Where the accused and his companions were given lathi blows by the opposite party before he struck any blow, the accused was justified in inflicting simple hurt 36 P L R 300 It is preposterous to claim for a judgment debtor whose property has been sold in execution of a decree, a right to assault the auction purchaser who has been put in possession of the property by the Civil Court and was protected by the Criminal Court in keeping that possession and supported by the orders of the Criminal Court Even if the judgment debtor managed surreptitiously to plant some paddy in some of the lands in dispute that would not give him such a possession as would justify any court to give him any right of private defence 152 I C 591

Where both parties wanted a fight and they had it and it is impossible to determine which side attacked first the question as to who were aggressors and which party acted in self defence does not arise 151 I C 737

Public servant

A school master is an officer of the Education Department maintained out of the State Revenues and is a 'public servant under section 21 I P C

12 Mys L J 133 A chairman of a Co operative Society is not a 'public servant' within the meaning of S 21 I P C 36 Bom L R 1133 A toll con ractor and also servants employed by him under S 11 of the Bombay Toll Act are public servants with n the meaning of S 21 I P C 36 Bom L R 1124 The complainant who had for some time been enrolled as a candidate peon in accordance with Rule 30 of the Patna High Court General Rules and circular orders but who got no pay or remuneration was entrusted with the service of a warrant of attachment of moveable properties which had been issued in execution of a decree He went to the house of the judgment debtor and attached his moveable property and while so acting was assaulted by the son of the judgment debtor who also took back the property It wss held that the complainant was a public servant within the meaning of S 21 I P C 12 Pat 184 The President of a Taluq Board is a public servant 141 I C 583 see 52 Mad 446 Warder of a jail is a public servant 30 Cr L J 1103 Any person whether receiving pay or not who chooses to take upon himself duties and responsibilities belonging to the position of a public servant and performs those duties and accepts those re ponsibilities and is recognised as filling the position of a public servant must be regarded as one 8 All 201

Separate sentence

The accused were convicted of offences under section 147 323 149 and 325 I P C and separate sentences were passed under sections 147 and 323 I P C on the one part and sections 142 and 325 on the other It was held that the separate convictions were proper but not the separate sentence passed Sections 35 of the Code of Criminal Procedure should in this connection be read subject to the provisions of sections 71 I P C 16 Cal 442 F B 57 Mad 643 It appears that when certain acts constitute more than one offence whether such offences do or do not fall under the purview of S 71 of the Indian Penal Code and the accused is charged and tried for more than one offence and the evidence establishes those offences the Court is bound to convict him of those offences though in awarding sentence the provisions of S 71 of the Indian Penal Code and of section 35 of the Code of Criminal Procedure would of course have to be duly kept in view 10 All 58

Unlawful assembly and rioting

If any one else is in wrongful possession of property the decree holder purchaser must not take possession by means of criminal force or show of criminal force But if he can obtain it in a peaceable and easy manner he has every right to do so even though that may involve the peaceable ejectment of another Where he has thus got into possession the ejected person has no right to reenter and use force for that purpose 151 I C 400

Where two unlawful assemblies fight with each other, there can be no question of private defence and every body who is proved to have taken part in the fight is liable to be punished for the offences committed by him 151 I C 980

A purchaser of a lorry committed default in payment of instalment of the purchase price, under the agreement of purchase the vendor company was entitled to recover possession of the lorry While the servants of the purchaser were in peaceful possession, the agents of the company tried to recover possession by the use of force They were resisted by the servants and in the course of the altercation, the agents of the company received some injuries It was held that the company had no legal right to use force their right was only to recover possession and damages through civil court the servants of the purchaser were justified in resisting their attempt to regain possession by force and so the servants could not be convicted under S 147 of the Penal Code 35 Cr L J 740

BOOK III.

CHAPTER VIII.

THE LAW RELATING TO EVIDENCE IN BRITISH INDIA.

The law relating to Evidence in British India has been codified in the Indian Evidence Act being Act No 1 of 1872 The Indian Evidence Act consists of three parts viz Part I which treats of relevancy of facts Part II which treats of proof and Part III which treats of production and effect of evidence

Part I consists of two chapters that is to say chapter I which deals with preliminary matters and Chapter II which deals with relevancy of facts Chapter I consists of Sections 1 to 4 Section 1 deals with the short title extent and commencement of Act Section 2 deals with the repeal of enactments Sections 3 and 4 deal with certain definitions

Chapter II consists of sections 5 to 55

Section 5 provides that evidence may only be given of facts in issue and of relevant facts

Section 6 provides that facts forming part of the same transaction are relevant facts

Section 7 provides that facts which are the occasion cause or effect of facts in issue are relevant facts

Section 8 provides that motive preparation and previous or subsequent conduct are relevant facts

Section 9 provides that facts necessary to explain or introduce relevant facts are relevant

The question as to the admissibility of the evidence must be determined with reference to provisions of the Indian Evidence Act Two persons A and B were tried on 21st July 1919 in the High Court Sessions by a special Jury for the offences of murdering one D a woman of the town on the 10th December 1914 of conspiring to rob her of theft of property from her house and for abetment of the offences of murder and theft under Secs 302 114 120 B 380/114 I P C Accused A was arrested on 11th March 1919 and B was arrested on 29th December 1918 At the trials the prosecutors wanted to adduce evidence (1) of the association of the two accused (2) of this association in cases spoken to by other women of the town in connection with the charges of theft which they made against them and (3) generally of a series of incidents from 1914 to 1918 that they used to go about

together under different names A taking B with him as his Durwan and introducing himself as a Babu to rich prostitutes of the town, and this being followed by their subsequent disappearance and discovery of loss of money and ornaments Counsel for the accused objected to the admission of the said evidence It was held that the evidence objected to was not admissible 21 C W N 501 F B

Section 10 provides that things said or done by conspirator in reference to common design are relevant In criminal cases, a person cannot ordinarily be made responsible for the acts of others unless they have been instigated by him or done with his knowledge or consent The section is not intended to make evidence the confession of a co-accused and put it on the same footing as a communication passing between conspirators or between conspirators and other persons with reference to the conspiracy 15 C W N 25 What constitutes conspiracy appears from *Barindra Kumar v Emperor* 14 C W N 1114 In order to establish that the accused were in correspondence with an individual going by the name of M N Roy in Berlin it is not incumbent upon the prosecution to establish that any of the letters were in fact written by any particular M N Roy It is enough to show that some person living in Berlin was in conspiracy with the accused and correspondence was passing between them 34 Cr L J 967

Section 11 provides for a case where facts not otherwise relevant become relevant

Section 12 deals with the determination of the amount of damages

Section 13 provides that facts become relevant where right or custom is in question

Section 14 provides that facts showing existence of state of mind or of body, or bodily feeling are relevant

Section 15 provides that facts bearing on question whether act was accidental or intentional are relevant

Section 16 provides for cases where existence of course of business becomes relevant.

Section 17 defines admission

Sections 18 to 23 deal with admissions

Section 24 provides that confession caused by inducement, threat or promise is irrelevant in criminal proceedings

Section 25 provides that confession to police officer cannot be proved

Section 26 provides that confession by accused while in custody of police cannot be proved against him

Section 27 deals with what quantum of information received from accused might be proved

Section 28 provides that confession made after removal of impression caused by inducement, threat or promise, is relevant

Section 29 provides that confession otherwise relevant does not become irrelevant because of promise of secrecy

Section 30 deals with consideration of proved confession affecting person making it and others jointly under trial for the same offence.

Section 31 provides that admissions are not conclusive proof but only operate as an estoppel

Section 32 deals with statements by persons who cannot be called as witnesses

Section 33 provides that certain evidence for proving in subsequent proceedings, the truth of facts therein stated is relevant

Sections 34 to 38 deal with statements made under special circumstances

Section 39 deals with how much of statement is to be proved

Sections 40 to 44 deal with judgments of court of justice becoming relevant

Sections 45 to 51 provide the cases where opinions of third persons are relevant

Sections 52 to 55 deal with cases where character becomes relevant Though general evidence of bad character is not admitted against the prisoner general evidence of good character is always admitted in his favour 10 W R Cr 17 14 Cal 721 Conduct like that of absconding though it may raise presumptions is at most corroborative and is not in itself sufficient to substantiate a charge in the absence of substantive evidence 34 Cr L J 386

The accused s guilt must be established by proof of facts with which he is charged and not by presumption to be raised from the character which he bears *Amrita Lal Hazra v Emperor* 42 Cal 957

Part II consists of chapters III IV V and VI

Chapter III consists of sections 56 to 58 which deal with facts which need not be proved

Chapter IV consists of sections 59 to 60 which deal with oral evidence

Chapter V consists of sections 61 to 90 which deal with documentary evidence

Chapter VI consists of sections 91 to 100 which deal with the exclusion of oral by documentary evidence

Part III consists of chapters VII VIII IX X and XI

Chapter VII consists of sections 101 to 114 which deal with burden of proof

Chapter VIII consists of sections 115 to 117 which deal with estoppel

Chapter IX consists of sections 118 to 134 which deal with witnesses

Chapter X consists of sections 135 to 166 which deal with the examination of witnesses

Chapter XI consists of one section 167 which deals with improper admission and rejection of evidence

CHAPTER IX

CERTAIN SPECIAL RULES OF CRIMINAL EVIDENCE

The following are the special rules of criminal evidence —

(a) The deposition of a medical witness taken and attested by a magistrate in the presence of the accused, or taken on commission, may be given in evidence in any inquiry, trial or other criminal proceeding although the deponent is not called as a witness The court has of course a power to summon such medical witness

S 509
Cr P C

But medical certificate is no evidence 9 Cal 455 Magistrate's record must show that deposition was taken and attested in accused's presence 4 C W N 49 The evidence of all witnesses duly recorded in the presence of the accused during preliminary inquiry, may in the discretion of the Judge, if such witness is produced and examined, be treated as evidence in the case for all purposes This rule does not extend to courts of magistrates other than the committing magistrates 31 Mad 127 A judgment may be based upon a deposition taken before a committing magistrate when the court could see special reasons for believing the original statement to be true either from the evidence of the same witnesses before itself or when that statement is to a certain extent corroborated by independent testimony Such evidence is subject to the provisions of the Evidence Act 11 Rang 4

S 288
Cr P C

(b) Any document purporting to be a report under the hand of any Chemical examiner or Assistant Chemical examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any criminal proceeding, may be used as evidence in any inquiry, trial or other criminal proceeding But certificate of a medical officer is no evidence 9 Cal 455 Report must be signed by officer having personal knowledge, Weir II, 661

S 510
Cr P C

But the Judge must warn the Jury when dealing with Chemical examiner's report 18 C W N 180

(c) In any inquiry, trial or other criminal proceeding, a previous conviction or acquittal may be proved

(1) By an extract certified under the hand of the officer having the custody of the records of the court in which such conviction or acquittal was had, to be a copy of the sentence or order, or,

S 511
Cr P C

(2) in case of a conviction either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was

inflicted or by production of the warrant of commitment under which the punishment was suffered

(3) in case of a conviction, either by a certificate signed by the officer-in charge of the jail in which the punishment or any part thereof was inflicted or by production of the warrant of commitment under which the punishment was suffered

together with in each of such cases evidence as to the identity of the accused person with the person so convicted or acquitted

The identity of an old offender cannot be established by finger impressions only Proper identification should be made, 1 C W N 33

(4) If it is proved that an accused person has absconded and that there is no immediate prospect of arresting him the court competent to try or commit for trial such person for the offence complained of may, in his absence examine the witnesses (if any) produced on behalf of the prosecution and record their depositions Any such deposition may, on the arrest of such person be given in evidence against him on the inquiry into, or trial for the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay expense or inconvenience which, under the circumstances of the case would be unreasonable If it appears that an offence

S 512 Cr P C punishable with death or transportation has been committed by some person or persons unknown, the High Court is empowered to direct any magistrate of the first class for holding an inquiry and examining any witness who can give evidence concerning the offence Any deposition so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limit of British India

This rule can be availed of only when the witness is dead or cannot be procured 22 W R Cr 33

CHAPTER X.

CASE-LAW ON EVIDENCE.

Evidence in one case cannot be imported into another between same parties for offences based on same occurrence But see the case of *Madat Khan v King Emperor* 31 C W N 393 P C in which case their Lordships of the Judicial committee held—

Two parties were charged for their attacks on each other in the same occurrence and the charges were tried separately at two distinct trials But naturally as the occurrences were common to both cases, the evidence given for the prosecution was similar to a substantial extent in each case Each party no doubt was a witness against the other but on the other hand there was also independent evidence In a case of that kind it is almost impossible to keep the cases wholly separate Although they were tried separately the High Court gave one judgment but treated the cases as two cases which had been separately tried It is said that they imported considerations from one case into the other When one looks at it to some extent that was inevitable and to some extent it did so happen There was however a body of separate evidence which was applicable to each case and that in itself was enough for the convictions so that although technically it might have been better to keep the evidence entirely distinct and to have delivered two separate judgments no injustice has followed from what was done There is no doubt that in substance the learned judges had materials on which to come to the conclusion to which they did come They have come to a conclusion which in substance appears to their Lordships to be the right one and it is only on technical grounds that the conclusion could be questioned

Case of no evidence — According to the well known principles of law a decision that there is no evidence to support a finding is a decision of law I propose to make the point clear by an illustration Although the case arises out of a civil suit the principle applies to criminal cases

One Harendra Lal Roy Chowdhury brought a suit claiming a decree upon an English mortgage executed by the proforma defendant Moni Mohan Roy in favour of the plaintiff Harendra Lal Roy Chowdhury of certain properties among which were an eight anna share of lands known as Mahal Gumokpati and another which purports to be in the town of Calcutta All the other properties enumerated in the schedule are outside Calcutta and outside the local limits of the ordinary original jurisdiction of the High Court of Judicature at Fort William in Bengal This mortgage was presented for registration at the Calcutta Registry Office by the

executant Mani Mohan Roy on the day of its execution and registered by its sub-registrar in the usual manner. In 1903 the plaintiff brought a suit on this mortgage deed against the defendant Mani Mohan Roy and others in the High Court of Judicature at Fort William in Bengal and on the 28th July 1905 obtained the ordinary decree for sale. Neither of the two effective defendants in the present suit were parties to such action. The parties to the suit upon the mortgage seem to have set up that there was a mistake in the description of the last mentioned property and that the words Ashutosh Dey Lane should be substituted for Gurudas Street. The learned Judge accepted this contention and accordingly held that property situate in Calcutta was included in the mortgage and that he had jurisdiction. No such decision if erroneous could extend the jurisdiction of a court of limited territorial jurisdiction and therefore the validity of the decree is open to challenge by the present defendants who were no parties to the proceedings. Similarly the direction to the said judge that the descriptions of the parcel in question should be amended (even if it was effective between the parties to that suit) cannot affect the present defendants whose title is of earlier date or render valid the registration if they can maintain their contention relating thereto. The defendant Mani Mohan Roy did not appear in the present suit. The female defendant Hari Dasi Debi and the third defendant Hem Chandra Bose (who was interested in the suit as claiming an intesest in the property through her) appeared and filed written statement clearly putting in issue the existence of the said Calcutta property above set forth and alleging that no portion of the property mortgaged by the mortgage bond lay within the jurisdiction of thd High Court of Judicature Fort William in Bengal in its original jurisdiction or within the jurisdiction of the Sub Registrar of the Calcutta Registry. Accordingly they contended that the alleged mortgage was not legally registered and that the decree was given by a court which had no jurisdiction to entertain a suit on the mortgage bond in question. At the hearing of the action the plaintiff called no evidence with regard to the said Calcutta property. Neither the plaintiff nor Moni Mohan Roy went into the box to give evidence as to there being any mistake in the description of the parcel. On the other hand the defendants proved that there is not and has never been any such property as No. 25, Gurudas Street in Calcutta and they further proved the property lying within the metes and bounds set out there did not belong to Mani Mohan at the date of the mortgage bond and that on the contrary he had not there and never has had any interest in the property within those metes and bounds. Such property has always belonged to parties wholly unconnected with the parties in this suit and has been continuously registered in their names in the Calcutta Registry. It follows therefore that No. 25, Gurudas Street which is the Calcutta property was a non-existing property. It was no doubt open to the plaintiff to prove that by

was a clerical or other error in the description of the property and that an existing property situate in Calcutta was intended by both parties to be mortgaged and to be described there But there is not a particle of evidence that such was the case. Neither the mortgagor Mani Mohan nor the mortgagees the plaintiff Harendra Lal Roy went into the box to give evidence as to this As to Moni Mohan, their Lordships cannot see how it would have been possible for him to give any such evidence because it would amount to stating that he intended that the deed should purport to mortgage an existing property in which he had not and knew that he had not any property or interest whatever This being so their Lordships of the Judicial Committee in the absence of evidence declined to accept an unsupported suggestion of counsel that the description of the property mortgaged as No 25 Gurudas Street was inserted by mistake It must be remembered that the proper description of houses in towns for the purpose of registration is by the street in which they are situated, and the number which they bear in that street so that the description of No 25 Gurudas Steet is that to which one should primarily look It was strongly contended before their Lordships that a Subordinate Judge had found that it was a mistake and that the High Court had accepted his finding so that the principle of two concurrent findings of fact would apply But their Lordships are of opinion that the principle of concurrent findings of fact does not apply to such cases as the present in as much as it is a case of no evidence and according to the well known principles of our law a decision that there is no evidence to support a finding is a decision of law The issue is that the existing description of the parcels was inserted by mistake A mistake means the parties intending to do one thing have by unintentional error done something else There is no evidence whatever here that the error was unintentional or indeed that there was any error at all, and their Lordships are therefore free to set aside the finding without in any way departing from their practice regarding concurrent findings of fact *Harendra Lal Roy Choudhuri v Srimati Hari Dasi Debi*, 18 C W N 817 P C

Confessions—

The two accused were arrested by the Calcutta Police and made confessions which were recorded by two Honorary Presidency Magistrates These confessions were subsequently retracted It was held that in considering the question whether the confessions are admissible or not a Judge is not confined to the grounds for the confessions as contained in the retraction nor would the fact of putting forward some particular ground for holding the confession inadmissible relieve a Judge from looking into all the circumstances in order to Judge whether the confession is admissible or not The duty of a Judge presiding over a trial held

with the aid of a Jury is under Sec 297 Cr P C to prevent the production of inadmissible evidence whether it is or is not objected to by the parties A judge is not concerned with the question of the truth or falsity of the confessions that is a matter entirely for the Jury He is only concerned with the question as to whether they are admissible in evidence They will be admissible only if they are voluntary If the Judge is satisfied as to the truth of a confession but doubts its voluntary character he is bound to exclude it under the law though such rejection amounts to excluding truth from a Court of Justice, *R v Mansfield* 14 Cox C C 639, *P v Scott* D & B 47, 8 Bom L R 697, 25 Cal 736 To decide whether a confession is irrelevant under Sec 24 of the Evidence Act, the Court will have to perform a three fold function, viz (*a*) to determine the sufficiency of the inducement, threat or promise as affording certain grounds (*b*) to clothe itself with the mentality of the accused to see whether the grounds would appear to the prisoner reasonable for a supposition that is mentioned in the section (*c*) to judge as a Court if the confession appears to have been caused in consequence of the inducement threat or promise 11 Bom H C R 137 1 C L R 275, 15 Bom 452 19 Bom 728, 28 Cal 613 26 C W N 54 25 Bom 168 The section does not require positive proof as defined in Sec 3, of improper inducement to justify the rejection of the confession the word 'appears' indicating a lesser degree of probability than would be necessary if 'proof' had been required The true and generally recognised view is that a confession duly recorded by a magistrate with the proper certificate appended to it will be admitted in evidence subject to the provisions and restrictions contained in Sec 24 Evidence Act under which a well grounded conjecture reasonably based upon circumstances disclosed in the evidence is sufficient to exclude the confession because it would be idle to expect the accused to prove the inducement threat or promise, for in most case such proof cannot be available But a contravention of the Circular Orders of the High Court in recording confessions would not render the record bad if otherwise the confessions are voluntary On a consideration of the circumstances of the case that the grounds contained in the retractions put forward by the accused were utterly unfounded but there were circumstances in the case which made the court hesitate to hold that they were not such as should be excluded as coming within Sec 24 of the Evidence Act and acting on the principle that in a case of doubt on the question of admissibility of evidence when it is of such vital importance to the prisoners as their own confession one should not hold them as admissible unless one is affirmatively satisfied as to their relevancy In order to ensure the voluntariness of a confession the Magistrate should question the accused with a view to discover whether he confesses voluntarily and this questioning must be in persuance of a real endeavour to find out the object of it This

requirement is not satisfied by putting a few formal questions, but it does not also imply that there must always be an enquiry as to the motive of the accused in making the confession 4 Cr L J 198, 13 C W N 869 Delay in producing before the magistrate prisoners who are willing to have their confessions recorded affects the value of the confessions If a prisoner wishes to make a voluntary statement the police must produce him before a magistrate and let him do it, whatever might be its character Whether the statement is satisfactory or inconsistent is not a question with which the police are concerned The questions and answers as recorded by the magistrate while recording the confession did not afford any sufficient data for arriving at the conclusion that it was voluntary See 29 C W N 300

When the magistrate has not put the necessary preliminary questions to the accused with a view to satisfy himself that his statement was voluntary the irregularity can be cured under S 533 Cr P C provided the omission has not injured the accused in his defence on the merits (1933) A L J 1351 F B

Dying declaration—Under the Indian Evidence Act the weight to be attached to dying declaration depends not upon the expectation of death which is a guarantee of its truth but upon the surrounding circumstances under which it was made and very much also upon the nature of the record that has been made of it so that it becomes almost always a question of fact as to whether it should be relied upon or not Where in recording a dying declaration the magistrate appeared to have put questions which were not all recorded though the answers were it was held that the procedure was open to objection in that in the first place the question might be leading questions and in the condition of a person making a dying declaration there is always very great danger of leading questions being answered without their force and effect being freely comprehended In such circumstances the form of the declaration should be such that it would be possible to see what was the answer so as to discover how much was suggested by the examining magistrate and how much was the production of the person making the statement *R v Mitchell* 17 Cox C C 503, 29 C W N 738

The evidence of the prosecution witnesses in respect of the alleged oral dying declarations of the deceased should be discarded 8 Luck 570

Admission of evidence under S 33 Indian Evidence Act—

I shall explain the law by an illustration Three accused persons were put on their trial under charges under Sec 394 and 397 I P C before the Assistant Sessions Judge of Alipur sitting with a jury The jury brought in a majority verdict of 3 2, finding the accused guilty under Sec 394 I P C i e robbery and causing hurt The case for the prosecution is that the accused persons persuaded one Satis Chandra Biswas to meet them

and go to see a tank for the purpose of dealing in fish He borrowed some money from one Surajballi went with his partner Jiban Krishna Das and met the accused at Beliaghata Station They then went to Dhakuria where they got out of the train After this when they were walking down the line, the three accused persons set on them and robbed them of Rs 124 which Satis had, one of them using a knife, and decamped Surajballi was examined in the committing Magistrate s Court When the case came up to the Sessions Court one witness said that he was ill But it appears from his cross-examination that he did not see him for about 1½ months The Sub Inspector however stated that he had seen him and had found him confined to bed and unable to move and he produced a certificate from a kabiraj who, however, has not been examined to show the nature of his illness and he was then bedridden On this Judge admitted the evidence under sec 33 of the Indian Evidence Act It was urged that he had no power to do this and that it was incumbent upon the Crown to examine the Kabiraj 31 C W N 908

The person who is called a representative in interest of another person is a person who was a party to the first proceeding 58 C L J 305 P C

Statement before the Police —

A sergeant of the Calcutta Police was convicted by an Honorary Presidency Magistrate under Sec 323 I P C for causing hurt to the complainant the driver of a taxi cab and sentenced to pay a fine of Rs 50 It appeared that the Magistrate refused to consider certain statements by the complainant to the Deputy Commissioner of Police on the ground that they were inadmissible in evidence It was held that the statements in question which were at variance with those made before the Magistrate were admissible in evidence and as they were important from the point of view of the defence and the Magistrate had not taken them into consideration in convicting the accused the conviction and sentence should be set aside The evidence was admissible under Sec 155, Sub Sec (3) of the Evidence Act subject only to this that the provisions of Sec 145 of the Evidence Act had been complied with in the matter of putting the specific parts of it which were to be relied upon to the witness in cross examination *Thomas J H Armup v Kedar Nath Ghose* 30 C W N 832 Where when a witness's statement differed from his statement to the magistrate the method adopted was to call the attention of the witness to the discrepancy between the two statements and then exhibited the deposition recorded by the magistrate to prove the discrepancy 14 Pat L J 543

Expert evidence

Handwriting—One can understand the words Handwriting principles to mean those essential factors that can distinguish one handwriting ... another or the genuine from the false They can apply to all ...

writings with either pen and ink or with pencil in English or in vernacular But it must be borne in mind that the writing of two different persons is not similar Upon this assumption you can if you get an admitted writing or signature compare upon photographic enlargement the disputed signature or writing with that of admitted ones. This is generally done by expert It is settled law that the one thing that is required for the admission of the evidence of an expert witness as to handwriting is that the writing with which the comparison is made should be proved beyond question or doubt to be that of the person alleged. The Statute 28 and 29 Vict C 18 Sec 8 lays down in express terms that the comparison by a witness of the disputed writing for the purpose of giving an expert opinion must be with any writing proved to the satisfaction of a Judge to be genuine See *Cresswell v. Jackson* 2 Foster and Finlason's Nisi Prius Rep 24 and *Cobbett v. Kilminster* 4 F & F 490 and though the condition is not expressly laid down in Sec 45 of the Evidence Act which is only a general section as to the admissibility of expert evidence yet it is clearly indicated in the illustration (c) to the section where the comparison is assumed to be made in all cases with a document which is proved or admitted to have been written by the alleged writer of the document in question The Rule was taken for granted in India in what appears to be the earliest reported case after the passing of the Evidence Act 22 W R 27? where Markby and Romesh Chandra Mitter J.J say that under ordinary circumstances they would assume that the comparison took place in open court and that a comparison having been made without any objection by the party affected by it the signature on the vakalatnamah which was used for comparison must have been in fact admitted When there is no comparison in open court before the accused with documents proved or admitted to be his handwriting such evidence is inadmissible and having regard to the minute and scientific investigations which are in practice made by handwriting experts by means of photographic enlargements and detailed measurement made out of court it must be emphasized that there is a necessity for strictly complying with the law as to what has to be done in the court itself The preliminary enquiries and scientific researches may be very necessary and very desirable but they cannot be allowed to supersede or in any way take the place of comparison in open court with proved or admitted writings which alone renders the expert's testimony admissible It was held by the Calcutta High Court as follows —

The unusually elongated tail of the G and the unusually short shaft of the P seem to be laboriously imitated in the note book from the writing on the envelope and it is obvious that it could be quite possible to put matters before the expert in a private examination which were not in the original document at all and so deceive him into giving evidence in all good faith upon writing which really had no connection with the case We do not say that this is so in this particular case but the suspicion that an entry

such as thus in the note book *prima facie* arouses illustrates the danger of substituting that which is not evidence, namely, the expert's private examination of the documents out of court for that which the law has under the safeguards of extreme care and caution made admissible as evidence on condition that the examination is made in open court in the presence of the party affected It is clear that on this ground the finding that the accused either wrote or forwarded by post the incriminating document falls to the ground, 16 C W N 812

Chemical Examination—

When the accused was convicted under secs 304 328 I P C for having administered arsenic mixed with sugar to two boys and thereby caused the death of one and hurt to the other and the Sessions Judge in his charge to the Jury expressed his opinion on the evidence in terms too dogmatic and unqualified although he informed them that on questions of fact they were not bound by any opinion of his and did not warn the Jury that before drawing inferences against the accused they must first be satisfied that he knew of the presence of arsenic in the sugar and that the evidence negatived the possibility of accident or mistake and that before using the chemical examiner's report they must be satisfied on the evidence that the substances examined were in fact what they were said to be the charge to the Jury was vitiated by misdirection 18 C W N 180

Proof of handwriting—

The ordinary methods of proving handwritings are (1) by calling as a witness a person, who wrote the document or saw it written or who is qualified to express an opinion as to the handwriting by virtue of Sec 47 of the Evidence Act (2) by a comparison of handwriting as provided in sec 73 of the Evidence Act and (3) by the admission of person against whom the document is tendered A document does not prove itself nor is an unproved signature proof of its having been written by person whose signature it purports to bear In applying the provisions of Sec 73 of the Evidence Act it is important not to lose sight of its exact terms It does not sanction the comparison of any two documents but requires that the writing with which the comparison is to be made or the standard writing as it may be called, shall be admitted or proved to have been written by the person to whom it is attributed and next the writing to be compared with the standard or in other words the disputed writing must purport to have been written by the same person that is to say the writing itself must state or indicate that it was written by that person The section does not specifically state by whom the comparison is to be made though second paragraph of the section dealing with a relative subject provides by way of contrast that in particular connection the C make the comparison In a case where a comparison was made

Sessions Judge out of Court after the conclusion of the arguments but whether with the assistance of the Assessors or not does not appear. If there was no submission of this question to the Assessors it may be a question how far this was not an irregularity. The result has been that on a comparison so conducted the Sessions Judge, without in all cases observing the precise terms of the section, has held certain writings to be those of one or other of the accused without having invited or heard arguments from their Counsel on this point. I cannot think this was a proper course to pursue. A comparison of handwriting is at all times a mode of proof hazardous and inconclusive and especially when it is made by one not conversant with the subject and without such guidance as might be derived from the arguments of counsel and the evidence of experts. *Barindra Kumar Ghose v. The Emperor* 14 C W N 1114

Character —

In connection with a case under S 400 I P C the Counsel for the Crown contended that having regard to the provisions of Sec 54 of the Evidence Act, previous convictions of the accused is relevant. In the case of 11 Cal 21 decided by a full Bench of the Calcutta High Court on the 6th July 188 the question referred for determination was whether in the trial of a person charged with the dishonest possession of stolen property evidence could be given of a previous conviction of the accused for attempting to receive stolen property knowing it to be stolen, and it was held that under S 54 of the Evidence Act a previous conviction was in all cases admissible in evidence against an accused person. We find that subsequently by Act III of 1891 the said section and some other sections of Evidence Act were modified as also an addition was made to Sec 310 of the Code of Criminal Procedure. Sec 54 of the Evidence Act as it then stood runs as follows — In criminal proceedings the fact that the accused person has been previously convicted of any offence is relevant but the fact that he has a bad character in which case it becomes relevant. Explanation —This section does not apply to cases in which the bad character of any person is in itself a fact in issue. The section was by Act III of 1891, S 6 so modified as to make it run as follows —"In criminal proceedings the fact that the accused person has a bad character is irrelevant unless evidence has been given that he has a good character in which case it becomes relevant. Exaplanation I This section does not apply to cases in which the bad character of a person is itself a fact in issue. Explanation II A previous conviction is relevant as evidence of bad character. It appears that Sec 14 of the Act has been so far modified as to add to it two Explanations and the Second Explanation runs thus — Explanation 2—But where upon the trial of a person accused of an offence the previous commission by the accused of an offence is relevant within the meaning of this section the previous conviction of such person

shall al o be a relevant fact" It further appears that to sec 43 has been added two illustrations (e) and (f, and they are as follows —(e) ' A is charged with theft and with having been previously convicted of theft The previous conviction is relevant as a fact in issue ' and (b) ' A is tried for the murder of B The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue,' By the same Act III of 1891 the following addition has been made to Sec 310 Cr P C 'Notwithstanding anything in this section evidence of the previous conviction may be given at the trial for the subsequent offence if the fact of the previous conviction is relevant under the provisions of the Indian Evidence Act 1872' Now the question is, are the convictions of the accused person in the dacoity cases already mentioned relevant under the provisions of the Indian Evidence Act 1872 The modifications which have been noticed in the Evidence Act are apparently owing to the decision of the Calcutta High Court in the case of 14 Cal 710 and the object which the Legislature had evidently in view was to amend the Evidence Act as regards previous convictions being used in evidence against an accused person in all cases and if one has to confine his attention to sec 54 of the Act as it now stands it cannot be held in any case that a previous conviction is relevent except where the bad characters of any person is itself a fact in issue Looking then to Sec 53 of the Act and the illustrations (e) and (f) added to it it may be well argued that the said two illustrations are exhaustive and that in no other cases except those mentioned therein can a previous conviction be relevant but turning to sec 14 of the Act it seems to that the view could hardly be correct for the Explanation 2, to which we have already referred distinctly states that where the previous commission of an offence is relevant the previous conviction of such person shall also be a relevant fact The question then, in the first place is whether the previous commission by the accused in the case of the offence of dacoity is relevant Having regard to the character of the offences attributed to the accused previous commission of dacoity by them is relevant under Sec 14 of the Evidence Act

The question in the second place is whether the convictions of the accused in the previous dacoity cases are relevant If the said convictions were previous to the time specified in the charge or previous to the framing of the charge in the case there could be very little or no doubt that they would also be relevant under Explanation 2 of Sec 14 of the Evidence Act But the convictions are all subsequent to the time specified in the charge and to the framing of the charge itself and not, therefore admissible in evidence 1 C W N 146

Uncorroborated testimony of an accomplice —

There is no doubt that the uncorroborated evidence of an ac is admissible in law But it has long been a rule of practice for the

Sessions Judge out of Court after the conclusion of the arguments but whether with the assistance of the Assessors or not does not appear If there was no submission of this question to the Assessors it may be a question how far this was not an irregularity The result has been that on a comparison so conducted the Sessions Judge, without in all cases observing the precise terms of the section, has held certain writings to be those of one or other of the accused without having invited or heard arguments from their Counsel on this point I cannot think this was a proper course to pursue A comparison of handwriting is at all times a mode of proof hazardous and inconclusive and especially when it is made by one not conversant with the subject and without such guidance as might be derived from the arguments of counsel and the evidence of experts *Barindra Kumar Ghose v The Emperor* 14 C W N 1114

Character—

In connection with a case under S 400 I P C the Counsel for the Crown contended that having regard to the provisions of Sec 54 of the Evidence Act previous convictions of the accused is relevant In the case of 14 Cal 2I decided by a full Bench of the Calcutta High Court on the 20th July 1887 the question referred for determination was whether in the trial of a person charged with the dishonest possession of stolen property evidence could be given of a previous conviction of the accused for attempting to receive stolen property, knowing it to be stolen, and it was held that under Sec 54 of the Evidence Act a previous conviction was in all cases admissible in evidence against an accused person We find that subsequently by Act III of 1891, the said section, and some other sections of Evidence Act were modified as also an addition was made to Sec 310 of the Code of Criminal Procedure Sec 54 of the Evidence Act as it then stood ran as follows — In criminal proceedings the fact that the accused person has been previously convicted of any offence is relevant but the fact that he has a bad character in which case it becomes relevant Explanation —This section does not apply to cases in which the bad character of any person is in itself a fact in issue. The section was by Act III of 1891, S 6 so modified as to make it run as follows —'In criminal proceedings the fact that the accused person has a bad character is irrelevant unless evidence has been given that he has a good character, in which case it becomes relevant Explanation I This section does not apply to cases in which the bad character of a person is itself a fact in issue Explanation II A previous conviction is relevant as evidence of bad character' It appears that Sec 14 of the Act has been so far modified as to add to it two Explanations, and the Second Explanation runs thus —'Explanation 2—But where upon the trial of a person accused of an offence the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person

CHAPTER XI.

Samples of Cross-Examination.

The success of a case depends largely on how the witnesses are handled. The timid witnesses must be encouraged, the talkative witnesses repressed, the witness who is too strong a partisan must be kept in check, and yet such management must not be obvious. It is always safe to ask little than to ask too much. Moreover, reckless cross-examination often lets in awkward pieces of evidence which might not be admissible.

The examination of a witness by the adverse party shall be called his cross-examination.

The examination of a witness subsequent to the cross-examination by the party who called him shall be called his re-examination.

Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon the matter.

The following are the golden rules framed by David Paul Brown of the Philadelphia Bar for an examination-in-chief of the witness:—

(1) If they are bold and may injure your cause by pertness or forwardness, observe a gravity and ceremony of manner towards them which may be calculated to repress their assurance.

(2) If they are alarmed or diffident, and their thoughts are evidently scattered, commence your examination with matters of a familiar character remotely connected with the subject of their alarm or the matter in issue; as for instance—Where do you live? Do you know the parties? How long have you known them? and the like. And when you have restored them to their composure, and the mind has regained its equilibrium, *proceed to the more essential features of the case, being careful to be mild* and distinct in your approaches lest you again trouble the fountain from which you are to drink.

(3) If the evidence of your own witnesses be unfavourable to you (which should always be carefully guarded against) exhibit no want of composure, for there are many minds that form opinions of the nature or

character of testimony chiefly from the effect which it may appear to produce upon counsel

(4) If you perceive that the mind of the witness is imbued with prejudices against your client, hope but little from such a quarter—unless there be some facts which are essential to your client's protection and which that witness alone can prove, either do not call him, or get rid of him as soon as possible If the opposite counsel perceive the bias to which I have referred he may employ it to your own ruin In judicial inquiries of all possible evils the worst and the hardest to resist is an enemy in the disguise of a friend You cannot impeach him—you cannot cross examine him—you cannot disarm him—you cannot indirectly, even assail him, and if you exercise the only privilege that is left to you and call other witnesses for the purpose of explanation, you must bear in mind that instead of carrying the war into the enemy's camp, the struggle is still between sections of your own forces, and in the very heart perhaps of your own camp Avoid this, by all means

(5) Never call a witness whom your adversary will be compelled to call This will afford you the privilege of cross examination—take from your opponent the same privilege it thus gives to you—and in addition thereto not only render every thing unfavourable said by the witness doubly operative against the party calling him but also deprive that party of the power of counteracting the effect of the testimony

(6) Never ask a question without an object nor without being able to connect that object with the case if objected to as irrelevant

(7) Be careful not to put your question in such a shape that if opposed for informality you cannot sustain it or at all events, produce strong reason in its support Frequent failures in the discussion of points of evidence enfeeble your strength in the estimation of the jury, and greatly impair your hopes in the final result

(8) Never object to a question from your adversary without being able and disposed to enforce the objection Nothing is so monstrous as to be constantly making and withdrawing objections, it either indicates a want of correct perception in making them or deficiency of real or of moral courage in not making them good

(9) Speak to your witness clearly and distinctly, as if you were awake and engaged in a matter of interest and make him also speak distinctly and to your question How can it be supposed that the court and jury will be inclined to listen when the only struggle seems to be whether counsel or the witness shall first go to sleep ?

(10) Modulate your voice as circumstances may direct, 'Inspire the fearful and repress the bold '

(11) Never begin before you are ready and always finish when you have done In other words, do not question for question's sake, but for answers

Cross-Examination—The essence of cross examination is that it is the interrogation by the advocate of one party of a witness called by his adversary with the object either to obtain from such witness admissions favourable to his cause or to discredit him Cross examination is the most effective of all means for extracting truth and exposing falsehood I think it not out of place to refer to a celebrated passage of Quintilian on the subject of cross examination The passage in Latin is quoted in Best on Evidence 4th and 11th Eds S 613 from his Inst Orat lib 5, C 7 and also in Taylor 10th Ed pp 1032 1033 footnote He says —"In dealing with a witnesss who is to be compelled to speak the truth against his will the greatest success consists in drawing out what he wishes to keep back This can only be done by repeating the interrogation in greatest detail He will give answers which he thinks do not hurt his cause and afterwards from many things which he will have confessed he may be led into such a strait that what he will not say he cannot deny For, as in an oration we generally collect scattered proofs which singly do not appear to press on the accused yet by being put together prove the charge, so a witness of this sort should be asked many things as to what went before —what came after —as to place time and persons and other things, so that he may fall upon some answer after which he must necessarily either confess what is desired or contradict his former statements If this does not happen it may be ome apparent that he will not speak or he may be drawn out and detected in some falsehood foreign to the cause, or by being let on to say more than the matter requires in favour of the accused the Judge may be led to suspect him, which will damage his cause not less than if h had spoken the truth against the accused It sometimes happens that the testimony given by a witness is inconsistent with itself Sometimes (and that is the more frequent cases) one witness contradicts another A skilful interrogation may produce by art that which usually happens accidentally A part from the cause witnesses are usually asked many questions which may be useful as to the lives of other witnesses as to their own character and position any crime they have committed their friendship or enmity to the parties in the answers to which they may either make some useful admission, or be detected either in a false hood or the desire of injuring the opposite party The faculty of interrogating witnesses effectively is one which requires a careful study and a considerable knowledge of human nature It is one of the highest arts of an advocate and can only be acquired after years of observation and experience

What is the secret of the art of cross examination? Hawkins J afterwards Lord Brampton) is said to have given the answer in one word—Patience It is building a brick wall round a man You ask your question and the answer enables you to plant one brick here Then another question and another brick, in quite a different place If you

your questions politely, very likely he will place half a dozen bricks in position himself They are scattered all over the place, but you have your plan By degrees the ring is complete The wall rises And he finds he cannot get out ' That is the patient and dogged way The direct attack is quite another method It succeeds only in the hands of counsel of commanding personality, and even then it is not safer unless they are sure of their ground Otherwise the attack recoils This method of cross examination by direct attack, is as a rule the least successful It is certainly the least pleasant to hear and the least edifying The insidious half friendly, half confidential method is usually the more successful merely because if a witness is attempting to deceive, it is more apt to put him off his guard See Walsh s Advocate p 146 Every man has his own style of cross examination, but what is needed most is an unruffled temper and courtesy to both court and witness Bullying and blustering or thumping the table are out of place in a court of justice and seldom succeed Good manner and good temper are indispensible requisites of a good advocate Few men, ever had such perfect command of themselves and such imperturbility in the fact of unfair opposition as Rufus Issacs now better known as Lord Reading sometime the Lord Chief Justice of England His management of tribunal, whether in success or in adversity was almost perfection It may be safely said that at Bar he never had an enemy See Walsh s Advocate p 125 In a recent speech delivered in London on cross examination Sir Walter Schwabe, K C formerly Chief Justice of Madras said—' Cultivate a pleasant manner and get on as friendly terms as possible with the witness Reproving lecturing, bullying were methods now recognised as belonging to a first generation One should bring out the unpleasant facts with an air of condolence and regret rather with an air of triumph, which might raise sympathy and one should never lose one s temper with a witness "

The art of cross examination is an art to be acquired essentially if one wants to become a successful criminal practitioner This art should be acquired by examples I propose to furnish to the readers some piece of cross examination In the case of *Emperor of India v Issurdas Mull* Issurdas Mull was tried before Jack, J, with the aid of special Jurors in the fifth Calcutta Sessions of 1928 He was charged under Ss 302, 302/109 304 392 and 397 He was acquitted of all the charges The facts of the case were that the accused were charged with murder of one Fakir Chand a jeweller and broker who lived in the same house—viz Ganesh Bhuban of Tortemko with the accused The accused told Fakir that he would introduce customers to him for jewellery On the 26th September Fakir was in possession of jewellery Fakir went to an unknown destination with the accused in a taxi cab with a box full of jewellery From that time no trace was made of Fakir or his jewellery The accused however, reappeared the same evening was questioned by the wife of the deceased and

was told that Fakir would return soon Fakir's brother-in-law also questioned the accused On the 28th September they approached the police One Gobordhan Das Mehra lived at 11/2 Baranoshi Ghosh Street It was said that the accused hired a room on the ground floor of Gobordhan He was alleged to have placed a trunk in the room and locked it on the day of occurrence Thereafter bad smell drew the attention of Gobordhan and the police was brought in and having opened the trunk the dead body of Fakir was found inside the trunk A large number of witnesses was examined in the case The following are the examination of *some of the important witnesses* —

The first important witness was the doctor Before dealing with the Medical witness I propose to make a preliminary observation in the language of Mr Justice Norman who stated as follows —

The evidence of a medical man or other skilled witness however eminent as to what he thinks may or may not have taken place under a particular combination of circumstances however confidently he may speak is ordinarily a matter of mere opinion *Human Judgment is fallible*, human knowledge is limited and imperfect New and previously unobserved phenomena which till they have been recorded or supposed to be impossible are constantly being noted It would have been easy to convict the first man who crossed the Atlantic in a Steamship of perjury had he told his tale in Court if the opinion of skilled witnesses who had the commencement of this century believed such a feat impossible could have been accepted as sufficient proof of the falsehood of the statement

The examination of some of the witnesses is as follows —

Major P G Mallay —

Q 21—Chief The body was in an advanced state of decomposition Would that make it sort of more difficult to give a positive opinion as to whether death was due to strangulation

It does make it a little difficult

The surgeon was cross examined by the humble author of this book

Q 69—What are the postmortem signs upon which you are relying for strangulation the tongue and the eye balls?

A Tongue and Eye balls there is nothing else

Re examination

Q 76—In the case of hanging the mark of the knot would be left on the neck as a rule

A Yes But the mark is oblique in the direction of hanging

Q 77—In this case did you see any such mark?

A The mark of a knot which is to the right the knot being to the right of the middle line and not up here—(pointing to his neck) as in hanging it would be—behind the ear or very much higher up

To Court —So that is another way you can say it was not hanging? A Yes

Are you a major in the Indian Medical Service and Police Surgeon in Calcutta ?

Yes

Did you perform a postmortem on the 29th September on a Hindu male named Fakirchand Mahato ?—Yes

And was he identified to you by a man named Ganpat Singh, his brother in law ?—Yes

(Shown Ganpat Singha) -(Identified)

What state was the body in ?—In advanced state of decomposition

How did you find it spread out on the Morgue table ?—Yes

Was there also a steel trunk there ?—Yes

Can you indentify it (Shown Ex 11)—(Identifies)

Was there anything round the neck of the body ?—Yes, there was a strong cotton string measuring 24 X 5 16" in diameter

How many strands ?—16, 4 large ones and each of these consisting of 4 smaller strands

How was it tied ?—Round the neck by means of a single knot, the knot being tied right in the middle of the line

(Shown Ex 1) Can you recognise the rope ?—Yes (Identifies) Rope tendered

I suppose you untwisted it yourself ?—Not much, but it has been opened out

Was it like that opened out at the end ?—No

After the post mortem was over what did you do with that rope ?- I handed it over to the constable who brought the body for post mortem examination

On removing that rope what did you find ?—There was a mark ½" wide transverse in direction completely encircling the neck, the mark corresponded with the ligature removed from the neck

Did you notice anything about the tongue ?—The tongue was protruding about 1

And the eye balls ?—The eye balls were protruding

Did you form any opinion as to the cause of death ?—The post mortem signs are consistent with death from strangulation

The viscera was sent to the Chem Exmr.

You did not receive any report ?—No

You saw no signs of poisoning —I did not suspect any poisoning

Or any other cause of death other than strangulation ?—No other cause

The body was in an advanced state of decomposition would that make it a sort of more difficult to give a positive opinion as to whether death was due to strangulation, the fact of the decomposition ?—It does make it a little difficult

I think there was a bad smell ?—Very bad smell

Both of the body ?—Body and the trunk

Was the appearance of the body consistent with death having taken place 5 days before the 29th Sept ?—Yes

In Cross examination

The deceased during the lifetime seemed to be a stout and strong man ?—Yes

Can you give an idea about his height ?—I can t give an exact idea

About 5—9 ?—No about 5—3 Weight ?—Would it be about 2mds—About 13 stone approximately

Can you swear that the string shows you is the string found on the body of the dead ?—I said cotton Yes

And if it is kept in contact with a decomposed human body for a considerable time it also dissolves ?—Not necessarily if it is twisted strongly I don t see how

Did you send this to the Cheml Exmr ?—No

In forming your opinion about the death by strangulation the signs you have observed as it appears are they sufficient to come to a definite conclusion that death was caused by strangulation ?—Can you swear to it ?

I did not find any other cause that is why I came to this conclusion Were you influenced in forming this opinion by the presence of this string ? Yes and the marks left behind

In cases of strangulation is not it that the circulation of blood continues only for a short interval after death say for 4 minutes or 5 minutes ?—Yes

Did you find any part of the decomposed body wherefrom any liquid was issuing forth ? Any blood ? No

Did you examine the windpipe and the muscles and vessels were they found to be cut or lacerated ?—The decomposition had advanced so much that one could not detect these things

Did you notice the vertebra of the neck ?—Yes

In what condition was it ? Healthy

Was there any rupture of the cuticles on the surface of the lungs ?—The lungs were decomposed and I could not make out any rupture

You stated to the learned Adv Genl That in your opinion death was caused on the 26th may I now put it that if the dead body is preserved in oxygen it decomposes at a very later stage it keeps intact ?—I have no experience of oxygen preservation

By preservation decomposition will take place at a later time but if a dead body is kept in a place where there is no oxygen it decomposes at once ?—No

If it is kept in open air it decomposed at a time later than if it is kept in a place where there is no oxygen at all ?—It decomposes later

There are various periods which it took to decompose ?—Yes

If it is kept in the open air in oxygen it decomposes at a later stage

if it is kept in a place where there is no oxygen at all, there decomposition begins at once ? No

When according to you did decomposition in this particular case set in how many hours before you examined the dead body ?—When decomposition set in you mean ?

Yes ?—About 50 hrs before

Had you any materials before you upon which this conclusion had been arrived at or you are saying it by guess ?—Not guess

What are the materials ?—The post mortem and the cuticles built in most places and the appearance of maggots round the neck and the condition of the viscera

Then you have not considered the position of the dead body being kept in a closely packed trunk ?—I have

What is the result ?—It has delayed the further putrefaction

You said that 3 days before you examined this is by guess, can you swear to it that it was 3 days and not 2 days ?—About 3 days

But you have not examined him during his lifetime ?—No

Then you dont know from the condition of his constitution how long it would take to complete the decomposition ?—The condition of what ? It depends upon the particular constitution ?—To a small extent on the constitution more on the surroundings the temperature and air

Is there any Medical authority for saying that this particular body was *1 day before or 2 days before ?* Can you refer us to any medl authority how can you say it was 3 days before not 2 days ?—There are general signs conjectures —From the presence of various things one can arrive at an approximate time

Then it might also be less than 3 days ?—No very much less

How much less 12 hrs ?—About 6 hrs if at all

You have noted the time you examined ?—Yes

The appearance after strangulation and after hanging are similar ?—Not always similar

What are the post mortem signs upon which you are relying for strangulation the tongue and the eye balls ?—The tongue and eye balls there is nothing else

And the tongue and the eye balls are protruded in the case of hanging *also*

Not to this extent

In this particular case were the eyes closed or open ?—Open

Any other change besides protruding ?—There was no other change

In the face why other change ?—The decomposition had amassed the signs

You are not in a position to say ?—No

How much weight can an ordinary Indian cooly carry, about a maund ?—I am not experienced in this line

Scientifically how much weight can an ordinary Indian cooly carry —I have seen coolies carry 2 mds of wheat

On the head ? Not more than a maund ?—I don t know, it depends on the strength of the carrier, some may carry very big weights

In Re xm

Somebody has spoken of a fluid coming out of that box before you saw it when the body was inside does a decomposing body give out fluid ?—Yes

What colour would it be ?—May be bloodstained it generally oozes out of the mouth

In the case of hanging the mark of the knot would be left on the neck is a rule ?—Yes but the mark is oblique in direction of hanging

In this case did you see any such mark ? There was a mark of a knot which is to the right, the knot being just to the right of the middle line and not up here (points to his neck) whereas in hanging it would be behind the ear or very much higher up

Court So that is another way you can say it was not hanging ?—Yes

Archibald Douglas Gordon

Are you Deputy Commissioner of Police Northern District ?—Yes

You remember taking charge of some rope from Asstt Commr Saktipada Chakravartti ?—Yes

At the time did you make a note as to the rope you took charge of ?—Yes

(Shown Ex VIII) Tell us what you did for that report That document is signed by you ?—Yes

Tell us what you did with this rope ?—I took charge of these pieces of rope, and I took them to Mr Marr of Macneill & Co as an expert in the manufacture of rope and I asked him for his opinion as to whether these pieces of rope were of the same manufacture After I had received his opinion I sealed up those pieces of rope in envelopes with my private seal and thereafter I handed them over to Inspector Madan Mohan Chakravarti

He was in charge of this case ?—Yes

(Shown rope)

What is that (Ex I) ?—That is a piece of rope I was informed had been found round the neck of the deceased

And it was sent to you wherefrom ?—By Saktipada Chakrabarti the Asst Commissioner

Rope tendered

And the other two pieces of rope ?—Also produced by him as having been found by Inspector Madan Chakravarti at the search of accused s house

In cross examination

Was one Goberdhonedas Mehera a witness in this case produced before you in this case ?—Yes

When was he produced before you ?—On the 30th September, as far as I remember

Did you pass any order in his case at the time or was any bail bond taken from him and no order was passed ?—I can't remember at the present moment what order I passed on the day

Do you remember who the legal gentleman was who appeared on behalf of Goberdhone Mehera then ?—No

These ropes you got on the 6th October ?—Yes

Mr Saktipada Chakravarti got them on the 29th September ?—Yes

Did you make any enquiry why there is so much delay in producing it before you —I knew that the ropes had been seized, and my first intention was to have them examined by the chemical analyst, but I was told that he was not in a position to give an opinion with regard to the rope and I therefore had to make enquiries as to some suitable expert to whom I could refer the matter

Were these ropes sent to any chemical analyst ?—No

Was there any order recorded about the chemical examination of these ropes ?—I think I made a remark to that effect on the police diary

Where is that ?—I cant remember

There is my reason why the A C could not send them to any rope expert for examination ? usually consults me in the investigation of important cases and takes my opinion on them But he could have done it

So far as this had been concerned there is no difference in power between yourself and A C ?—It is not a question of power, it is a question of finding a suitable person who might be considered an expert in this matter

Can he not find that out himself without your intervention ?—Yes he could have done

In detection of important cases police officers are rewarded in Calcutta if important cases are detected by them ?—I would not put in that way It depends upon the ability displayed It might be that they might get reward for detecting a comparatively unimportant case they might get no reward unless they display conspicuous ability

And if in an important case any culprit is found out the officer has got to submit his explanation ?—Not necessarily, the Dy commissioner is aware of the progress of the investigation Do you remember that the Commr of police sent a takid for this case, a reminder for finishing the investigation ?—No he consulted me as to the progress of the case from time to time

Is this case directly under you or under Mr Bird, Deputy Commr Detective Department ?—Under Me

This case according to you is an important one ?—I think all murders are important cases

SAKTIPADA CHAKRAVARTI

Are you Assistant Commr Saktipada Chakravarti of Police North Town ?—Yes

Do you remember the 28th September last ?—Yes

Did you get a message ?—It was on the night of the 28th early hours of the 29th at about 3 30 in the morning

In consequence of that message did you go to No 11/2 Baranoshi Ghosh's street ? Yes

What did you find there ?—I found a trunk containing a human body

Where was the trunk ?—On the street side near about Baranoshi Ghosh's Street

Is that the trunk (Shown) ?—Yes

What was done in your presence with regard to that body ?—I took out the body had a look at it and went to the room where it was found and began to make enquiries

Did you notice anything peculiar about the body ?—I found that it was a Marwari's dead body and that there was a rope round the neck

Did you leave that rope round the neck ?—Yes it was left as I found it

Can you recognise the rope (Shown Ex 1) ?—Yes that is the rope

Did any one examine the room in which the trunk was found Was anything about the door of the room ?—Yes I found that the room had been forced open and one lock had been taken charge of and one rope had been taken charge of

(Shown Ex III) ?—That also had been taken charge of by the Sub Inspector who had arrived before

Was the body identified after that ?—Yes shortly after that the body was identified by one of the relations of the deceased I think Ganpat Singh and later on by the son of the deceased as well

Did you make search for anybody on that night ?—Yes I searched for this accused Issurdas and then I came to know that he had been already arrested the same evening just a few hours before the find

And did you send the body to the Morgue ?—Yes

And did he produce any rope before you (Shown) ?—Yes when I was at the police station he produced these two pieces of rope found on search of accused's room

And did he produce any other articles before you ?—Yes, he produced before me 2 keys I think one of them a small key which fitted this lock

(Shown keys)—Yes this is the key for this padlock

Work it—This does not work here now

(Shown Ex IX)—This is the key

Did you test that key at that time ?—Yes

And did it work as it is working now ?—Yes

(Shown Ex VIII)—Yes

Does that fit the lock ?—Yes

But it will not work I suppose because it is broken ?—Yes

Did you get that rope (Ex I) back afterwards ?—Yes

They brought it back ?—It was sent in a sealed cover from the Police Surgeon

And did you make it over to Mr Gordon ?—Yes

In XXN

When did you first come to know of this occurrence ?—At about 3-30 in the morning of the 29th September

(Shown Ex 5) You got this on the 26th ?—Yes

Knowing it was in pursuance of this information ?—Yes

Then on the 29th morning you have stated to the learned Adv General that you came to know that Issurdas has already been arrested At the same place near the street where you went you got this information ?—Yes at the same place after the identity of the deceased was established I learnt from one of the relations of the deceased Ganpat Singh or some one

Did you then enquire whether the accused's room was searched ?—Yes What was the result of your enquiry you got the information that it was searched ?—Yes

That is why you did not go to search it again ?—No I did not go to search it again because the matter was not with the thana officers the *investigation so far* was being done by the Detective Department and everything that had been done in the matter had been done by the detective officer The key was with him at the moment From the time the accused was arrested the key was with the police either with the detective department or thana officer ?—It was not with the thana officer

It was with the detective officer ?—So far as I know, I cannot be positive about that

Why did you not search the place of Goberdhone Mehera you arrested *him* ?—Not at the *moment*

When did you arrest him ?—At about 8 o clock

In the morning at your thana ?—At *Jorasanko thana*

You sent for him and then he came and you arrested him ?—No he was along with us to be examined

And after his examination he was arrested ?—Yes

Then did you not think it necessary to search his house ?—No

You have stated that you got the rope (Ex I) *from the police Surgeon* on the 29th September ?—Yes or on the 30th morning I dont know, with the Postmortem report

Either on the 29th or 30th ?—Yes

And the other ropes from Mr Gordon, Deputy Commr on the 29th ?—Yes What were you doing with the ropes till the 6th October, when you produced them before the Deputy Commr ?—The one that was found on the person of the accused was sealed and kept in the malkhana with the Police Surgeon s seal and the other two were kept in the thana malkhana after being properly marked and identified by the office

No Question of the chemical examination of any of those ropes arose then ?—No

For what did you send them to the Deputy Commr ?—To get his orders as to what is to be done to prove the identity of the ropes, as I thought that both were of the same make and same fibre

Can you not of your own accord send them to expert ? I don t know of any expert myself

But you know very well there are many rope merchants in Calcutta ?—Yes You did not enquire of them whether there are any expert in their firm ?—I thought it better to place the facts before my Deputy Commr in a matter like this

Before you produced the rope before the Dy Commr had Inspector Madan Mohan Chakravarti anything to do with these ropes did he examine them or were they sent to him ?—The two pieces that he took charge of were with him but he had nothing to do with the other one that was sealed

Did you tell Madan Mohan Chakrabarti before he went to search the accused s room what sort of rope was found on the neck of the deceased ?—No

When was Gobordhone Das Mehera produced before the Dy Commr ?—The Deputy Commr went to Jorasanko Thana and he saw him there he was not produced

You took a bail bond from him ? Personal recognisance bond

He has not yet been formally discharged ?—I can t say I don t remember

Find out from the diaries are the diaries here ?—I don t know

Court—Would you like to refresh your memory ?—No

Gobordhone was sent to the lock up ?—No

There was an announcement of reward in connection with this case ?—I think so

What do you call this case a thana case or a Detective Department case ?—A thana case

Isn t it the practice if any culprit is not traced then the Detective Department takes charge of the case and investigates it ?—Not necessarily

Who was in charge of this investigation Madan Babu ?—Chakrabarti Inspector

And not M M Sen of of the Detective Department ?—Also

missing report he made certain preliminary enquiries, then when the body was discovered for a couple of hours Sub Inspector Surendra Nath Pal made enquiries and then from 6 or 7 in the morning of the 29th Inspector Madan Mohan Chakrabarti has been in charge of this case On the 30th till 2 30 in the morning on the 29th Inspector M M Sen was in charge from 3 30 till 6 in the morning of the 29th Surendra Nath Pal was in charge and afterwards Inspector Madan Mohan Chakrabarti

Did Mr Sen formally make over charge to S N Pal ?—It is not a question of formally making over charge Inspector Madan Chakrabarti being a senior officer as soon as he put his head into this case or took over this case M M Sen automatically ceased to be the investigating officer

Even if M M Sen belongs to other department ?—Yes

When was this investigation finished ?—I think within about 7 days so far as the more important portions of the case are concerned, and as to the case taken as a whole I don t think the investigation is complete yet. The Commr of Police gave a takid in this case for finishing the investigation ?—Not that I know of

Did any legal gentleman appear on behalf of Goborbhone before you ?—No

Before the Dy Commr ?—I don t remember Would it be your brother Abhoy Chakravarti a pleader of the Police Court ?—He did not appear

Were you sent for by Mr Bird Dy Commr of the Detective Department in connection with this case ?—No

And you did not make any statement to Mr Bird with reference to this case ?—I did not see Mr Bird in connection with this case

(Shown Ex III) These padlocks can be had in the bazar ?—Yes

And these padlocks have generally 2 keys ?—Yes

Have you found out 2 keys or one ?—One

In Re XX

With regard to the search am I right in saying that so far as you know the accused s room was only searched once ?—Yes

And that was by Madan Mohan on the afternoon of the 29th ?—Yes

Reward was offered and for what ?—For the finding out of the persons and finding the property stolen in this case

Is that published in the Police Gazette ?—Yes

Court—That rope was not untwisted when you saw it round the neck of the deceased ?—No

Court—It is the same rope ?—Yes

In further examination

Have you produced the Crime Register with regard to the arrest of Goberdhan ?—Yes

Does that show the date on which he was discharged by the Deputy Commr ?—Yes

Do s that show the date on which he was discharged by the Deputy Commr ?—Yes on the 2nd September

Have you also produced the Cal Police Gazette for the 1st October offering these rewards ?—Yes

Were these rewards subsequently increased ?—Yes

To what ?—To I think, Rs 250

Were those rewards for the same information ?—Yes

And no other rewards were actually offered ?—No

In further cross examination

Look at this crime Regr (shown) Personal recognisance of this accused was taken on the 1st Octr ?—No, it was taken on the 29th or 30th Sept

Look at the date there P R 1 10 ?—Yes

Up till then according to your record he must have been in the hajat ?—No, immediately an arrest is made, orders are passed by me verbally as to what is to be done with the accused and this record is passed on the next day when the reports are heard therefore this would not show the correct state of affairs

What you have done has not been recorded anywhere, it is a verbal order and verbal taking of personal recognisance ?—Everything has been recorded properly in the crime register excepting the orders column of the Asst Commr and the Deputy Commr which is done when the papers are sent with the reports on the day following You yourself did it, you could have noted the date of the personal recognisance ?—These papers are not sent to my office till the following day along with the diary in the case

When was this published in the Police Gazette ?—On 1st Oct

When was the order for publication made can you find out from the Gazette ?—I cannot

Date of the order ?—No except that it is 1st Oct it must have been some time before that

In ordinary course of events how long does it take to publish ?—2 days I imagine

In Re XX

Can you say how long it is in evidence that the man was detained until the evening ?—I think he was kept in the police station till the afternoon of the 29th

Is that quite consistent with the crime sheet ?—Yes it is quite consistent with the order in the crime sheet

Is there any other document from which you can show us whether he spent the night in the lock up or not ?—I think if his personal recognisance bond is produced we can see exactly when he was released

Have you got the personal recognisance bond ?—Yes (produced)

What is it dated ?—The 29th

Does that show that he was released on that day ?—Yes.

It does not mention the hour ?—No I think I can give the hour as well it was about 5 45 or so after we reported the fact to the Commr of Police

To Counsel for defence

The accused was called upon to appear before the Magte on the 1st Oct at 11 A M ?—Yes

Did he appear ?—Yes

Where is the order of the Magte dealing with this case ?—The Magte in this case was the Deputy Commr acting as a justice of the peace

Madan Mohan Mehara

Chief

You live at 11/2 Baranashi Ghose St ?—Yes

What is your occupation ?—I am a clerk in Allahabad Bank

What are you duties ?—Current Ledger keeper

Are you the brother of the witness Goberdhan ?—Yes

Do you occupy the room next to his in that house on the first floor ?—Yes

Do you know the accused in the dock ?—Yes

Do you remember the 26 Sept last ?—I do

Did you see the accused on that day ?—Yes he came to our house that morning to rent a room

Did he say why he wanted ?—He said that he expected a man to come down to Calcutta from his native place and that he was going to engage the room for him

Did he pay any money ?—Rs 10

Did you go to work that day ?—Yes at the usual time

What time did you get back ?—At about 6 or 6 15

What about your brother did he return that night ?—Yes

Did you see the accused on that day ?—Yes, he came accompanied by a coolie who had a trunk on his head after coming the accused called out

Where were you at the time ?—In my room On hearing his call I shouted aloud to Gobardhan my brother and informed him that he was being called

Did you leave your room ?—I went out of my room and stood on my verandah and looked down from there into the courtyard and by that time my brother had gone down and the accused and this coolie had come into the courtyard

Did you see what happened after that ?—The box was taken down and kept inside the room, the room was padlocked and then they left

While these operations were going on were you on your verandah ? Was the room fastened with a padlock like that (shown) ?—Yes, this was the padlock (identifies

Did you see the accused again on the 27th ?—No

On the 28th did you go to your work ?—Yes

Did you return with your brother the usual time about 6 o clock ?—We left the bank together but on the way we parted, my brother having some business at the Cyclist s shop , so I came back home straight from the bank and my brother went off towards the cycle repairer s shop.

So you arrived home before your brother ?—Yes

When you got home, did you notice anything unusual ?—Yes, a very bad smell

Did you notice that smell in the morning ?—In the morning when we were going to have our bath at the water tap near the reservoir the foul smell was there but it was not so very strong as in the evening so in the morning we thought that the smell was coming from the drain or some such place in the vicinity of the reservoir , so directions were given for the calling in of the methar and the cleaning of the place thoroughly, but in the evening when the foul smell was found to be very strong we discovered that was coming from inside the room

When you discovered that did your brother do anything ?—My brother also after satisfying himself that the smell was coming from inside the room at first suspected that there was some dead cat or some such animal lying rotting inside the room , so he sent me to go and fetch Isward is to come with the key so as to enable us to see what it was that was giving out this smell inside the room ? I went and from the street I looked up and saw that the accused s room up stairs was closed so I came back and reported to my brother that the accused was not at home

How can you see his door from the street did you go inside ?—I am referring to the door leading on to the verandah on the roadside there are 2 doors on that side I did not go through the main gate

If those doors were shut the room would be quite in darkness ?—That I can t say

You did not see any light in the room ?—No

Did you return to your house then ?—Yes

Did your brother do anything after that —After waiting for a while I think it was my brother himself who went to look for the accused

Do you know if he found him ?—No he did not

When you both failed to find him what did you do ? My brother went once again thereafter and when he was not found even then the padlock was broken open by that I mean the staple which the clasp is fastened and on to which the padlo attached that staple was forced open

What did you find inside ?—After the door was opened it was found that from under the trunk a reddish colour liquid was coming out spreading over the floor

This liquid had it any offensive characteristic ?—Bad smell

Then what did you do ?—We reported the mater to our landlord Bholanath Mukerji and he advised us immediately to go to the police

Did you both go ?—We did

Did the police come ?—Yes

And was the box taken out of the room and opened ?—Yes

Do you recognise the padlock (shown) ?—Yes, this padlock was the one with which that box was secured

That morning your brother went to the Thana after the discovery later in the day ?—Yes, that was the morning of the 29th

Was he detained in the Thana until evening ?—Yes

With regard to his detention did you do anything with regard to getting any legal advice or anything of that sort ?—No I did not go to any pleader but I went to consult people known to us sought their advice

Do you know whether any pleader appeared on any occasion before any police officer or any Magte on behalf of your brother ?—I did not instruct anybody and as far as I know no pleader appeared

When this door was broken open was anybody there except yourself and brother ?—Yes Lalchand a tenant who lives on the premises and the servant Ramdin

In XXN

You have stated that you sought the advice of your friends and relations when your brother was arrested ?—Yes

None of them asked you to go to a pleader ?—No they advised me to wait as to how it all turned out, they said—you will know shortly as to what is going to happen

You were not in any way afraid of your brother's detention ?—As it was an unusual event that had taken place as far as my brother was concerned I was naturally very much worried over it but when I consulted my friends they said there was nothing to fear about it and asked me to wait to see developments

The persons you approached for advice did any of them come to the Thana ?—I can't say, no one went with me

Did you inquire what was the charge against your brother ?—Yes I did make inquires at the Thana and the people there told me that no harm was likely to be done by my brother being made to wait at the Thana and that all that they thought

would take place was something in the way of police proceedings at the end of which my brother would be allowed to go back home, therefore I came back

Which Thana was it ?—Jorasanko

Inspector Modan Mohan Chakrabarti was there ?—Yes

You inquired of Madan Babu ?—I did not put any question to Madan Babu but there were a number of other officers there and I questioned some of them

You know S N Pal who went to your house in the early morning of the 29th ?—Yes

Did you inquire of him ?—No

Sakti Babu the Asst Commr ?—I questioned him as to what we were to do with reference to the bank whose servants we were Sakti Babu said that he was going to phone up to the bank and asked me to take our own steps with regard to filing application there and that there was nothing to be anxious about

Do you know the name of the officer of whom you made inquiries about the charge made against your brother ?—I in fact asked no one as to what the charge was

Did you know Fakirchand Mahato the deceased ?—I never knew him before this incident

Who broke open the trunk in which the dead body was found ?—The Inspr Babu ordered the dhangar who had been brought by the police he ordered him to force open the trunk

Were you present when the dead body was taken out of the trunk ?—Yes

Did you notice any mark of injury about the temple of the dead ?—I did not notice The face had become so dark in complexion of course I noticed a rope round the neck

When the dead body was lifted out of the trunk was there any fluid in the hold of the trunk ?—I was not present when the body was lifted out of the trunk I was present when the lid of the trunk was first opened

Did you find any fluid inside the box ?—I could not see below the dead body what there was if the liquid had been there I take it must have been below the dead body

Did you go to Conesh Bhaban in the morning of the 29th ?—I went on the 30th to buy vegetables not on the 29th

At the time the dead body was lifted out of the trunk did you go that time to Gonesh Bhaban ?—I did not

Where were you precisely when the door of the room was o[illegible] was on the ground floor

In front of the room ?—Yes, I was also standing there

The only persons present at the time were yourself, your brother and Lalchand ?—And the servant

Before breaking open the door your brother became nervous ?—No he became nervous after opening the door and seeing what was inside the room

The entire staple was taken out or half of it in order to open the door ?—The whole of the staple did not come out, it got broken

Did the padlock come out ?—The ring into which the padlock was fastened having got broken the padlock came off

Both the rings ?—Yes

Was the padlock tried with any key in your presence that night ?—No You said that on the 28th you returned at about 6 o clock, when did you go to Ganesh Bhaban to look for the accused ? Once about 6 30 or 6 45 that was immediately after I returned home How many times did you go that night ?—Twice Out of my own accord, that was the first time and again upon instruction of my brother

When did your brother return that night from office ?—8 or 8 30

Did you say anything to your brother about the smell ?—When my brother came in he put the question as to from where the smell was coming out and I drew his attention to the room and said it is from there

Before he asked any question you did not tell him about the smell ?—Directly he set his foot on the courtyard he felt the smell and he rather angrily said has not anything been done with regard to the smell yet and then he said wherefrom is the smell coming and I called out from upstairs saying that it was from inside the room

Then you had not stated anything to him before he asked you this question ?—There was no time for me to give him the information at all at once as soon as he came in

Did your brother give you any direction at the time when you went to Ganesh Bhaban to look for the accused ?—He merely told me, go and find out if the man is there or not let him come here

How many families lived in your house ?—3 including the servant

Downstairs ?—Lalchand lives in the room on the first floor which is on another side of the building other than ours and on the ground floor only the servant lives

The servant lives with his family ?—Yes, he has got his wife there

And the room in which this trunk was kept was just by the side of the servant's room ?—No the room was not next to that of the servant, the servant's room was away on another side of the courtyard

Between servant's room and the room in question there is only the courtyard ?—Yes

And in the courtyard there is a reservoir and a water tap ?—Yes

Are you the assistant of your brother in the Bank ?—No he is in class

of one ledger I am in charge of another ledger There are about 20 ledger keepers in the bank like us

When you got this smell in the morning of the 28th, did you mention this fact to your brother?—The smell was discovered by us both at one and the same time, therefore there was no opportunity for me to mention it to him before he noticed it He and I noticed it at one and the same time while we were at our bath

Did any of the inmates of the house draw your attention to this smell?—No

In the evening?—In the evening of course all the people in the family were complaining of the very bad smell

They put pressure upon your brother to put a stop to the smell?—They said you must do something or other with regard to this smell

Do you remember the night of the 26th Sept?—Yes what about?

Did your brother come out in the evening?—He had his meal and after that he went out on tuition work as usual

He came back late?—Not late in the sense that he was later than usual

What is the usual hour he comes back?—10 or 10 30 some day

Some times midnight?—No 12 o clock is not our time for coming home

On the 26th evening you have stated to the learned adv Genl that you saw from the verandah you did not come downstairs?—I meant I did not come downstairs while the trunk was being brought in afterwards I did come down

After they left you came downstairs?—Yes

Then you did not see the accused putting this padlock upon the door?—Yes I saw it from where I stood

Who else were present at the time the trunk was being put in except your brother and the servant?—My brother was there the servant was also in the house

Where was the servant? I can't say where he was whether in his room or sitting down anywhere outside his room

You did not see him from your verandah—I could not see him

Had he been in front of the room you would have seen him—If he had been standing or sitting at the door of his own room then I could not from where I was get a view of him

If he stood in front of the room in which the trunk was placed could you or could you not see him from the verandah?—Certainly I would have seen him

Could you hear any conversation between your brother and the accused from the verandah?—Is[illegible] was heard by me saying this much let this trunk be here now I am going to fetch more of the belongings

Was he talking very loud?—The normal voice in which people h[illegible] conversation

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Are you the assistant of your brother in the Bank?—No he is in [illegible]

of one ledger, I am in charge of another ledger. There are about 20 ledger-keepers in the bank like us

When you got this smell in the morning of the 28th, did you mention this fact to your brother ?—The smell was discovered by us both at one and the same time, therefore there was no opportunity for me to mention it to him before he noticed it He and I noticed it at one and the same time while we were at our bath

Did any of the inmates of the house draw your attention to this smell ?—No.

In the evening ?—In the evening of course all the people in the family were complaining of the very bad smell

They put pressure upon your brother to put a stop to the smell ? —They said you must do something or other with regard to this smell.

Do you remember the night of the 20th Sept ?—Yes, what about ?

Did your brother come out in the evening ?—He had his meal and after that he went out on tuition work as usual

He came back late ?—Not late in the sense that he was later than usual

What is the usual hour he comes back ?—10 or 10 30 some day

Some times midnight ?—No 12 o clock is not our time for coming home

On the 26th evening you have stated to the learned adv Genl that you saw from the verandah, you did not come downstairs ?—I meant I did not come downstairs while the trunk was being brought in afterwards I did come down

After they left you came downstairs ?—Yes

Then you did not see the accused putting this padlock upon the ... Yes, I saw it from where I stood

Who else were present at the time the trunk was being put in ... your brother and the servant ?—My brother was there, the servant ... in the house

Where was the servant ? I cannot say where he was whether ... or sitting down anywhere outside his room

You did not see him from your verandah ?—I could not see him

Had he been in front of the room you would have seen ...

or could you not see him from the verandah ... him

Could you hear any conversation between ... from the verandah ?—Ishwardas was heard ... trunk be here now I am going to fetch him ...

Was he talking very loud ?—The normal conversation

Could you hear your brother telling him anything at the time ?—As far as I know there was no other conversation

Did the accused tell your brother at that time to whom the trunk belonged ?—This much that the trunk belonged to the man for whom the room had been engaged and that he Iswardas was going to get the other belongings of the man

You were present when the room was hired in the morning ?—Yes

Where did this conversation take place ?—In the courtyard

What were you doing then ?—Bathing

Your brother ?—He had also come down to have his bath

Any question of receipt for Rs 10 arose ?—My brother after getting the money said—I shall give you a receipt for this but the accused said what is the use of receipt I trust you are not going to act dishonestly towards me keep the money I am going to get the things

Was the servant also there at that time ?—I did not pay attention

Could you hear any conversation between the accused and the cooly in the evening when he brought the trunk ?—No

The cooly did not demand any hire ?—After leaving the trunk there the cooly went out with the accused he demanded no cooly hire in my presence

You heard the horn of motor car blowing nearby at the time after the the accused and his coolie left ?—No motor horn sound appeared to be coming from close by

Has your brother received on account of what he realised by way of rent ?—Not that I know of

In the morning of the 29th when the Police came on your information how many constables came here ?—You mean during the night ?—Yes after they lodged the information at the thana ?—There was one Sergeant the Inspector and as regards constable I am not sure I think there were 2

Before the door was opened what sort of lamp had you with you ?—A hurricane lantern

In whose hands ?—My recollection is that it was in the hand of Lalchand

In Re xn

With regard to this house I think on the ground floor there is a room occupied by the servant ?—Yes

And there is a large room on the west side which is a room which was hired out to the accused ?—Yes

And there are two smaller rooms on the west side ?—Yes And there is another one towards the inner side of the house they are both in fact on the west side of the courtyard

With regard to these two rooms were they occupied on the 26th, 27th 28th September last ?—No

On the first floor there is your room and your brother's room on the

east side of the house ?—My room overlooked the courtyard and my brother's room is at the back of my room

On the other side that is to say to the north there is the room of Lalchand ?—Yes

And there are 2 rooms to the south of Lalchand's room on the inner side ?—Yes

Were they tenanted on the 26th 27th and 28th September ?—One of those 2 rooms is Goberdhone Babu's kitchen and the other is inhabited by an old woman

What does the old woman do there ?—She is a relation of ours She is called grand-mother by us

To Court—Then on the ground floor there is only the servant's room and 2 vacant rooms ?—Yes

To Court—One of which was this room in which the body was found ?—Apart from the servant's room on the ground floor there are 2 other rooms abutting on the courtyard outside one of those rooms was the room on the ground floor in the inner apartment that room is my kitchen

Gobordhandas Mehra

Chief

Where do you live ?—At 11/2 Barinoshi Ghosh street

What is your occupation ?—I am employed at the Allahabad Bank

What are your duties there ?—Current ledger keeper

How long have you been in that employment ?—About 9 years

Where is your native country ?—I belong to Patna

Who is the owner of your house ?—Bholanath Mukherjee

Is he a pleader ?—Yes

And are you a lessee of the whole house ?—Yes

Does anybody else live in that house except yourself ?—Yes 3 or 4 others

Are they tenants of yours or members of your family ?—There is a relation of mine who is living there as my tenant and there are other people living there as tenants

What is the name of the relation of yours who is living there as your tenant ?—Madan Mohan Mehera

What relation is he to you ?—My younger brother

And is he also employed at the Allahabad Bank ?—Yes

Prior to September 26th of this year, were you acquainted with the accused ?—Yes

Do you know where he used to live ?—At Ganesh B[illegible]

Have you ever been to his room ?—Yes

For what purpose ?—Just to meet him [illegible] If

if I had nothing to do and if he would send for me I

How often ?—3 or 4 times in a month

you are ?—The coolie was taller than the accused (Q Repeated) it is difficult to say

Did you notice whether the box was padlocked ?—Yes, it was in a padlocked condition

(Shown Ex IV) was it padlock like this ?—Yes

I think you told us that when he put the box in the room he padlocked the door ?—Yes

Was the padlock he put on the door one like this (Shown Ex III) ?—This was the padlock

On the 27th did you see the accused ?—27th was the day on which the accused had told me that the expected the tenant of that room was to come that morning after coming from my office finding that the tenant had not come I went over to the accused s house at about 9 o clock at night to ask him about it

How far is your house from the accused s house ?—3 or 4 minutes walk

Did you find the accused there ?—I did not find him there in that day

Did you see him on the 28th ?—On the 28th at about 3 o clock in the afternoon the accused called at my office he asked me if I had been to his room on the previous day to look for him I said yes and I said, you had told me that your friend was coming down, neither has come nor have his things come what is the reason of this ?—Thereupon the accused said to me they have come down by this morning s train after you had left home for your office and either in the course of the day, by night or else by tomorrow morning they will be going to your place, so saying he went away

What time did you get back to your house that night ?—7 30 or 7 45 P M

Did you notice anything unusual ?—On the morning of the 28th and before leaving for office I had perceived some short of a foul smell somewhere in the house I suspected there was something, some rat or other lying dead and rotting somewhere near the reservoir, so I gave directions for the reservoir and the immediate surroundings to be throughly cleaned with the help of the methar and with these instructions left behind I had gone to the office On my return I found that the smell was much greater and much fouler than it had been in the morning and in trying to find out the source of it I discovered that the smell was coming from out of that room

What did you then do ?—Immediately sent my brother Madan Mehra to go to Issurlas and see him at his house and request him to come at once with the key of the padlock attached to the door of that room so as to enable me to find out what this bad smell was coming out from

Did your brother bring him ?—No he came back and reported that he could not find the accused Shortly after about half an hour I sent my

servant to look for the accused and bring him and he also came back and reported that the accused could not be found

Thereafter at about 9 o'clock at night I sent Lalchand Khanna one of the tenants in the house to go and fetch the accused and he also came back and reported similarly that he could not find the accused at his house Then thinking that the accused may have gone to the bioscope or some such place I thought I had better wait till about 11 o' clock by which time the accused whereever he may be would return , so after waiting till 11 o' clock I personally went over to look for the accused at his house but I could not find him there

What did you do after that ?—I came back to my house and then my suspicion was that probably a cat or some such animal must have entered the room through the window and must have died inside the room and that the smell was on account of that, and labouring under that impression in the presence of my tenant I with my own hands wrenched off one of the staples to which the clasp was fixed and the padlock put on in order to force open the door

Was anybody present while you were opening the door in the fashion you have described ?—Yes

Who ?—Lalchand Khanna Madan Mohan Mehara, Ramdin

Do you recognise that (shown Ex V) ?—Yes this is the staple which I wrenched off

Tell us what you saw when you had opened the door in the way you described First of all is there an electric light in your house ?—No

Lamps ?—Yes, lamps

Will you tell us what you saw when you opened the door ?—As soon as I pushed open the door the smell that came from inside the room was unbearable I could hardly keep standing there and with a lantern I looked in to see what it was inside the room and standing at the threshold of the room I could see with the help of the light in my hand that there was some fluid coming out under the trunk and spreading over the floor and that bad smell was from that fluid I could not say from which part of the box the fluid was actually oozing out but I noticed the fluid under the box and spreading over the floor

When you made this discovery what do you do ?—I immediately went to the landlord of the house Bolanath Mukherjee and also to Hem babu living opposite and reported to them the circumstances

Did they give you any advice ?—They both came with me to my place

Did they give you any advice ?—They both came with me to that place. And immediately after having a look at whatever there was there they advised me to leave the things precisely as they were and run to the police to give information

And did you give information to the police ?—I did immediately I went to the Jorasanko thana and gave information there

You gave it to Sub Inspector S N Pal ?—There was Sub Inspector there whom I saw to whom I reported the matter, but the senior Inspector was out on his rounds at the time I had to wait there about an hour till he returned After he returned an entry was made in the diary and then the police came with me to the house

Did you sign your statement in the diary ?—Yes

Is that your signature (shown) ?—Yes

(Statement Tendered)

When the police arrived at your house what did they do ?—When the police came they had with them one Dome, a low caste man, and the police had the trunk forced open with the help of that Dome man, after pulling out the box to the courtyard inside the house

Was there a search list prepared ?—Yes

And you signed it ?—Yes

That is your signature at the bottom (shown) ?—Yes

Afterwards from the courtyard was the box taken anywhere ?—Yes out in the street

Did you look at the deceased man in the box ?—When the dead body was in the box I could only make it out that it was the body of a man

Did the police take it out of the box ?—After removing the box to the street the body was taken out of the box

Did you look at it then ?—Yes, but the appearence had so much changed that I couldnot recognise whose dead body it was

Did you see anything round the neck ?—Yes, there was a rope found tied round the neck

Was it rope of this sort (shown Ex I) ?—Yes

Did any other police officer come ?—Assistant Commissioner of Police

Mr Santipada Roy ?—Some such name was mentioned

And he had the body removed ?—Yes It was removed from there to the hospital or some such place

Did the relations of the deceased come there and identify him ?—Santu Babu the Asst. Commr of Police after coming on the scene deputed a police man to go and arrest Issur Dass Mull, thereupon the Darwan of of Ganesh Bhavan and the inmate came there that a dead body had been found and that in connection with that the police-man had arrived in the house

You do not know of all these ?—I wasn t there at the Ganesh Bhavan at the time but while I and others were standing about the dead body at the corner of the street there, Jamadar and others from Ganesh Bhavan came running to have a look at the dead body

Did you see Ganpat there ?—That man was one of those who came and he was the man who recognised the dead body

In xxn

Is the accused your friend ?—Only an acquaintance

Not a friend ?—No

Had you any other business in Ganesh Bhavan to go to ?—Yes, vegetables are sold in that house and I used to go in the morning to buy vegetables from there

The deceased and that accused are Marwaris you say you come from Patna ?—Yes

Did you make any statement to the police ?—I did, I answered such questions as the police put to me

When did you make the statement to the police ?—Morning of the 29th

Except the hiring of your room had you any other business with the accused before ?—No there had been no occasion for any business with the accused

What is the origin of your acquaintance with the accused ?—There is a firm of Lunuchand Rasarm in Cross Street The proprietor of that shop and I were co tenants in the same house previously and I being acquainted with him used to call at his shop where the accused also used to call and it was there that I became acquainted with the accused

Had you any business in particular at the shop ?—Nothing in particular excepting that once or twice I had some warm clothing wrapper or shawl washed through him and made a purchase or two there

Do you know the business of the accused ?—I do not know

When was that ?—That was about two or three years ago

How long was this accused living at Ganesh Bhavan —I have heard that from the accused He had told me that he had been living in that house from the time of riots

How long have you been visiting that place the accused's room ?—Five or six months approximately

The accused hired your room for what period ?—He did not mention any fixed period, but he took it on the basis of monthly rent and was free to keep it as long as he liked

Was there anything in writing ?—No

What is the usual rent of your ground floor rooms ?—Rs 11 is the total rent of the two rooms of the ground floor one of which is larger than the other

You were living upstairs ?—Yes

It is a two storied house ?—Yes

Was there any tenant in the other ground floor room the small room ?—No it was lying vacant

Have you any account books with regard to the realisation of rents from your tenants ?—No I am not in the habit of keeping accounts of my own expenses

Any receipt book ?—No not in the way of printed book

Did you grant him any receipt for Rs 10 which you received ?—No and that in these circumstances I was having my bath at the time the accused came and gave me advance rent Rs 10 I asked him to wait so as to give him the receipt He said, what is the hurry about it, so the receipt was not given

Did you meet him on the 27th ?—No

And on the 28th when you met him there was no mention of any receipt —There was no mention of any receipt, he came to see me at my office that day

Was there no one else present when he paid you Rs 10 ?—Madan Mohan Mehera was there I cannot say whether he actually saw the accused paying me the money or not.

Was this transaction done in your ground floor room ?—No near my reservoir outside the room where I was having my bath

And Madan Mohan also was having his bath at the time ?—He had come down to have his bath

Where were you when the coolies brought that trunk in the evening ?—I was in my room upstairs.

Where did you meet them ?—When I came down to the front door down stairs

Did they call you ?—Yes

The room was open at the time ?—It was open in the sense that there was no padlock attached to it but the staple clasp was fastened

The accused could have placed the trunk without your intervention ?—But the accused did call out to me prior to his keeping the box inside the room and apart from that there is the ordinary well known custom amongst us that nobody can enter a man s house inside the front door without announcing himself

But the accused was supposed to be in possession of the room which he had hired in the morning ?—Until a man actually comes and begins to stay there how are people to know that he is commencing to enter and live

Then this is the reason why you were called and not for bringing down the trunk from coolie s head to the floor ?—I take it to be so I understand in that way

What was ?—That the reason why he called me then was to show me that he was keeping the box there leaving it there

At that time was any other person present when the box was taken into the room ?—Ramlan Kurmi a tenant on the ground floor, he was there

The tenant of the small room ?—No of another room

You have stated that there are only 2 rooms on the ground floor ?—Only 2 rooms vacant.

Did you enquire as to whom the trunk belongs to ?—The accused himself informed me that the box belonged to the man who was coming and

for whom the room had been engaged He added that the rest of his belongings would be coming on the following day

The room was hired for one person or more ?—It was represented to me that the room had been engaged for a family man that is to say, a man who was going to live there with his wife and children

Did you enquire how was this trunk sent to Calcutta By railway parcel ?—I did not ask any question about that

Did you notice any fluid or liquid coming out of the trunk at that time when it was first introduced into your room ?—No neither did I have any foul smell from inside the box nor was anything oozing out of the box

Was this trunk brought just at candle light or after some time ?—It was just after candle light it was time for candle light

How much was the coolie paid for bringing this trunk ?—I dont know

You were there all along ?—No payment was made to the coolie by the accused in my presence But after padlocking the door he walked out with the coolie

Did he go in a motor car or he walked out ?—He walked out of my house and after leaving my house what he did I dont know

The coolie and the accused both went together ?—The coolie was ahead the accused was behind That is how they left out of the front door

And you are quite sure the coolie did not demand any payment ?—Not in my presence he may have asked for it outside

On that night, of the 26th did you go to Ganesh Bhaban ?—No

On the 27th you have stated that you sent for the accused ?—On the 27th I went myself

What was the reason ?—To tell him that neither has his man come nor his furniture

Why were you anxious you got payment ?—It was not a case of expressly going to his house for the purpose of making that enquiry but I happened to pass by on my way back home from the bazar and after having a ceremonial view of the thakur there as I was going past the house I shouted out to the accused from the street and when he appeared I asked him casually (Then says) He did not appear I intended to ask him the question as to why his man had not come but he did not appear Therefore I could not ask him the question

Did you enquire of his whereabouts in Ganesh Bhaban on that night of the 27th ?—No, there was a man standing in the adjoining verandah he informed me when I shouted out to the accused that the accused was not at home So I went away

You entered Ganesh Bhaban on the 27th did you hear anything of the death of Lakirchand Mahato ?—I did not enter the house I shouted out from outside.

On the 27th did you suspect anything wrong ?—No, in fact even up to the time when Issurdas saw me at my office I had no suspicion at all in my hand

Did you not mention to him about the smell which you got on the morning of the 28th ?—No, because I had thought that the origin of the smell was something or other near the reservoir, and I thought that the place had been cleaned

You were examined before the Coroner ?—Yes

You did not mention about the smell which you got on the morning of the 28th ?—I may have

On the 28th in the afternoon when the accused saw you in your office your brother was by your side ?—No

He is your assistant at the Allahabad bank ?—No

Does he do no business at the Allahabad bank ?—He is also employed at Bank he is another ledger keeper there

On the 28th you returned from the office, you have stated at about 8 p m ?—7 30 or a quarter to 8

Your brother also came along with you ?—No, because on that night I had to go to the cycle repairing shop where I had left my bicycle for repairs so my brother came home direct from office

He came earlier also ?—Yes

Did any body report to you about this smell, any inmate of the house ?—Immediately I returned home and on entering the house I found the smell still existing and I wanted to know if the cleaning that I had left instructions for had been done or not and then I was informed by the people in the house that the smell as a matter of fact, was coming out from inside the room

You were not so much affected by the smell as the tenants on the ground floor ?—But I was not in the house all day, I was in the office (Q repeated) And one who would come down would be equally affected

And yet they did not make any report to you ?—Of course they reported when I returned home from office in the evening of the 28th

What is the name of the tenant who reported to you ?—Ramdin reported Madan Mohan Mehera spoke about it, and the family members of my family also spoke to me about it

At what time on the night of the 28th you went to see the accused ?—I went as a last stop, that is to say after having failed to get the accused by sending for him and that was at about 11 o'clock at night

At what time did the first messenger go there ?—About 8 o'clock, within 5 to 7 minutes of my arrival at home, and I came to learn after coming home that my brother before my return home had already tried to find the accused by going to his place

Did he tell you at what time he went to the accused's place to make an enquiry about him ?—He said he felt the smell immediately after his return

from office, and as I had not yet returned he had gone away himself to try and find out the accused

But he could not find him?—He told me so on my return, and I sent him out again to try and see if he could find him

Did you ask him to make any enquiry about the whereabouts of the accused at Gonesh Bhaban?—The direction which I gave my brother was to go and tell Issurdas that there was some cat or some such animal lying dead inside the room and that it was necessary to find that out by opening the room and so to request Issardas to come with the key

When you went there the last time did you make any enquiry as to the whereabouts of Issurdas?—Yes I asked the Jamadar of the building as to whether Issurdas was back home or not He said that he had been on duty there all the time Issurdas had not yet returned

Do you know the name of the Jamadar of Ganesh Bhaban?—Samunder Singh

When did you actually suspect something wrong with the trunk?—When the door was opened

What time of the night was it then?—Directly after I returned from Issurdas's place where I had been at about 11 o'clock

Why were you so much anxious for opening the door because it is a daily occurrence some cat or mouse dying at some corner of domestic places?—The foul smell that was coming out of that room was so very much unbearable that the tenant on the ground floor as also Lalchand Khanna who lives in the room immediately above this room in question and I myself felt from what I myself smelt that it cannot be allowed to remain as it is, it must be found out

Did you consider it necessary to get some legal advice or any advice before breaking open the door?—I happened to know Issurdas myself and besides my intention in forcing open the door was not to have anything to do with the box but only to examine the inside of the room to find out the cause of the bad smell Therefore I did not consider it necessary to take legal advice

In case of a bad smell it is the practice in Calcutta that people refer to the Corporation officers did you do that?—What I have heard is that letters to the Municipal Corporation are written in cases where the source of the nuisance from foul smell is a constant one that is it is all along the same

It is the practice if one wants to break open the tenant's room it is always done in the presence of the Police Did you inform the police before breaking open the door?—No not in the beginning

You know this is a criminal offence?—No I don't know that.

Were you nervous at the time?—Of course I was when I opened the door and found that it was the trunk which emitted the smell I was trembling with fear

And not before you broke open the door ?—No if it had not been a known man I would not have taken that step

You have been examined before the Coroner ?—Yes

Did you say that you were nervous at the time of breaking open the door ?—It was the sight that was disclosed to my view after forcing open the door that made me nervous, nothing before that

You did not say that before the coroner ?—I *did* make a statement to the effect that the foul smell was unbearable

And you became nervous ?—My recollection is not about what I stated there

Who were present at the precise moment when you broke open the door ?—Ramdin Kurmi Lalchand Khanna and Madan Mehara

They are all your own men ?—I have therein named my brother, my tenants

And you have stated to the learned Adv Genl that you saw certain fluid coming out was it coming out in large quantity ?—The fluid had flown over the floor from under the trunk

They were in liquid condition still then ?—I did not touch it but from its look it was spread over the floor, it looked like some fluid substance

Was it still coming out when you broke open the door ?—I did not actually see it flowing out but I saw it spread over the floor and it looked like fluid

What was the colour of the fluid ?—It was of a dirty colour, reddish you might call it the colour of the earth

You were examined before the committing Magte ?—Yes

In answer to the learned Adv Genl you have stated that you *went to* the Thana and before the committing Magte you stated, I then *sent for* the police ?—I went to the Thana when Madan Mohan Mehara was with me

At that time you suspected the accused at the time when you were going to the Thana ?—Certainly I came to the conclusion that there must be some mystery about the box which had been left there

Did you then enquire of him at the Ganesh Bhaban before going to the Thana ?—No I went straight to the Thana

After lodging your information at the Thana did you ask the police to arrest him at once ?—When the Assistant Commissoner came and saw the dead body pointing out to the accused's house and the room in which the accused lived which was visible from the place where I saw standing I said to the Assistant Commissioner to make inquiries at once about the accused to find out if he was somewhere concealing himself in the house or not

When the trunk was opened did you find any fluid coming out of the dead body ?—Immediately the lid of the box was lifted it emitted so much

ba l smell that everybody who was there hurriedly stepped backwards it was impossible to stay there and therefore I had no opportunity to notice whether the fluid was actually trickling out of the dead body or not

When the dead bo ly was taken out of the trunk in the street and after it was removed did you find any trace of the fluid there ?—All that I noticed at the time when the dead bo ly was lifte l out of the trunk was this that in the hold of the trunk there was a small quantity of flui l and there was a mark of injury about the temple of the dea l body and there was a rope round the neck

Was the fluid coming out of the temple ?—I did not notice so much

Did you notice any part of the dead body from which the fluid might be coming ?—No I did not think so much about it saw that it was a dead body that was all

You know the brother in law of the deceased was sent for by the police at the time when the dead body was taken out ?—They all came running immediately after the police went to Ganesh Bhaban

Did you make any suggestion that the brother in law of the deceased should be brought in ?—No not I because as I have said already I myself did not recognise the dead body I did not know whose dead body it was

You have stated to the learned Adv Genl that there was a conversation with the accused before the 26th re the hiring of your room where was this conversation ?—3 or 4 days before the 26th at about 6 in the after noon or thereabouts as I was on my way back home I was passing Ganesh Bhaban and the accused Iswardas was standing in his varandah over looking the road on seeing me he called me upstairs when I went up he spoke to me about the expected visitor and the vacant room in my house which he proposed to rent for the visitor

Was any one else present there at the time when this conversation took place ?—There was a barber there who had just done the shaving of Iswardas

You don t know him ?—No

When were you arrested in connection with this case ?—On the 20th in the morning Sakti Babu asked me to come to the Thana to make my statement

You were not arrested ?—After waiting there up till when it was time for me to go to office I asked for his leave to go home and get ready to go to office thereupon Sakti Babu said you can t go you will have to remain in my custody so he kept me in his custody all day

And then you were released ?—After that he allowed me to go where I liked but told me that I would have to appear again before him whenever required

Isn t it true that you were kept in the lock up 3 days ?—I was kept in the Thana all day

In the Thana lock up ?—Yes

I put it to you that you are in the habit of visiting Ganesh Bhavan every night ?—Not every day but only at times

I put it to you that you had an altercation with the dead because you tried to enter into his zenana ?—This is a false accusation up till today I have never put my feet on the upper storey

Now I propose to append certain Cross examination of some of the witnesses in some notable trials —

PAKUR CASE

Cross Examination Of Sreemati Anima Devi

Cross examination of Srimati Anima Devi, daughter of Benoy's deceased sister Kanchanbala was held before Mr T H Ellis District Judge of 24 Perganas in the case in which Benoyendra Chandra Pande of the Pakur Raj family Dr Sivapada Bhattacharya Dr D R Dhar and Dr Taranath Bhattacharya are being prosecuted on a charge of conspiracy to murder Amar step brother of Benoy

Cross examined by Mr B P Pain for Benoy witness stated 'On the day Benoy and Amar returned from their evening walk at Deoghar Amar did not make any complaint to us nor did he show any mark of injury on his nose Sourin Babu did not ask Amar in my presence if he had any sore or had been bitten by a dog On the day Benoy brought Dr Dhar at Deoghar Dr Dhar did not stay at night in our house On the day after Dr Dhar's first arrival Amar was a little better than before Nabu came to Deoghar before Dr Dhar My father Ashu Babu was also there I have not heard that my father and Nabu (Rabindra) objected to Dr Dhar's injection I cannot say how many times Dr Dhar was called at night The day Benoy called Dr Dhar I cannot say if the conversation between Benoy and Amar was carried on in writing No such thing was done in my presence

Eight or ten days after the departure of Benoy and Dr Dhar Dr Sivapada and Dr Dhar came again During this interval Amar recovered so much that the doctor allowed him rice I cannot say how many days after Nabu's arrival Babu told him about what happened to him when he went out for a walk with Benoy I never saw Amar and Benoy quarrel in my presence Benoy used to come to dine now and then in our house on Jatin Das Road After his meal, Benoy used to take rest before his departure but I cannot say if he used to sleep I do not remember if Amar used to lie in the same bed with Benoy He might have Perhaps Benoy lay on the bed of Amar, but there was another bed beside that bed

The night previous to our departure for Pakur on November 26 myself Ranubala Amar and Rani Surjabati went to Benoy's house on Pandit Road We were there for about two hours Benoy was also present there all along We went there to see Benoy's grandmother before our depar

ture I did not say anything to Benoy's grand mother Rani Surjabati might have told her that we were leaving for Pakur the next day There was a talk of our departure there

Next day we went to the Howrah station I do not know if the Police allowed any taxi to halt there Our taxi had just stopped when Amar got down A taxi was in our front from which things were being unloaded When the first taxi moved away our taxi advanced and stopped and then our things were removed Benoy made a signal by a nod of his head I cannot say to whom he made the signal He looked towards our taxi I might have told the Police that from the demeanour of Benoy I thought he was making some signal to somebody I do not remember if the coolies were around our taxi When Amar first went towards the station Benoy did not follw him Amar went alone As soon as we got down from the car Amar came back and Benoy was then standing near our taxi I did not notice any man coming from the opposite direction and pushing Amar Nor did I see any man coming up to Amar and then going back I did not say anything when Amar shouted 'somebody had pricked me Imme diately after Amar said Dada somebody had pricked me I think Amar was then studing I noticed Amar's puncture I did not notice Rani Surjabati examining the mark I did not tell Rani Surjabati that there was a puncture mark on Babu's arm I think Amar did not show his arm to Rani Surjabati there I saw the pinprick on the arm first Amar's sleeves were rolled up Next I saw mark on his shirt I noticed one or two drops of liquid like water rolling down the sleeves When we saw the puncture mark and the liquid we did not tell Benoy why do you say there is nothing? There are the puncture mark and the liquid I do not recollect if Amar said Dada has anybody pricked me? No crowd collected around us to enquire about the matter I did not see if before entering the platform anybody came and enquired if anything had happened to Amar's arm

When the train started Binabala took tincture iodine from a box and gave it Amar said in the presence of us all that he saw a black man in Khaddar We did not ask Amar in which direction the man went I did not ask nor did I hear anybody ask Amar if that man was short or long thin or fat I did not recollect if I told the Police that Amar said that if anybody had pricked him with a bad motive it must be his brother Nor do I remember if I said this in the lower court We had a discussion in the train about the incident happened I do not remember when Amar said *he would get down whether it was just when the train had started or after* wards During the journey Amar had that punjabi on We did not ask him to take it off

We reached Pakur at about 10 P M I do not remember if any doctor came that night or the following day I did not ask Amar why he did call a doctor when he was so eager to get down from train I ca what became of Amar's 'punjabi I met Kumar Jnanendra N

Pakur I did not tell him anything about the incident nor do I know if Amar told him anything"

Cross examined by Mr N C Sen, Counsel for Dr Dhar, witness said I have no personal knowledge of the injection given by Dr Dhar Before Amar took rice, he did not move about in the room Amar used a bed pan during this period To soothe Amar to sleep whoever was near him used to give him injections Rabi told us that he had given information to the police I cannot say how long before Benoy's arrest, Rabi had given the information

Rabi asked me what I knew about the incident. I told him what I knew There was also a discussion in the family and everyone said what he or she knew After that the information to police was given I was questioned by the police only once I did not make any supplementary statement to Rabi or K D Gupta There was a talk in the house with Rabi and others"

Cross examined by Mr P N Banerjee for Dr Sivapada witness said I heard Dr Sivapada's name before his visit to Deoghar I do not think I saw him before his visit to Deoghar As far as I recollect, I told police that Dr Sivapada and Dr Dhar went to Deoghar to see Amar

I think I said in the lower court that Dr Sivapada and Dr Dhar went to Deoghar on the day Amar first took rice I think I told the police that when Amar said in the Howrah Station 'Dada somebody had pricked me', Benoy replied that was nothing

'Before his death Amar could not utter words distinctly He could speak distinctly up to 10 p m on the night he died

Re-examined by Rai Bahadur N N Banerjee witness said 'Benoy came on invitation to our house on Jatin Das Road on three or four occasions

Replying to the jury witness stated that between the time when our taxi reached Howrah and the time when the pin prick happened, I had no conversation with Benoy He might have a little talk with Rani Surjabati

To court witness said that Amar had on his person an ash coloured *Punjabi* Some of his clothes were sent to the cremation ground with his other clothes I remember that Amar brought the 'punjabi' from Calcutta to Pakur

Examined by the Public Prosecutor, Srimati Banabala Debi elder sister of Amar stated "Two years ago Benoy went to our house at Deoghar Amar was also there at that time I heard that the two brothers went out for a walk Benoy left that night after taking his meals Two or three days after Benoy's departure Amar could not bear light His lips became twisted Dr Sourin Babu was called He declared it to be a case of paralysis due to cold A day later, Amar had tetanus and got lock jaw Benoy came with a doctor named Bhattacharya Dr Taranath Bhattacharya is in court Amar could not speak then Amar carried on conversation with

Benoy by writing Benoy and Dr Taranath left the same night A few days later Benoy brought Dr Dhar who is also in court Amar was then much better He could speak then I heard that Dr Dhar gave an injection to Amar I saw the site of the injection which was the right buttock of Amar After the injection he felt pain At night he felt jerky sensations That night Dr Dhar stayed there He left the next day A few days later Benoy again came with Dr Dhar and Dr Sivapada Dr Sivapada and Benoy are present in Court They came at night Amar had taken rice on that day Dr Sivapada left the same night while Benoy and Dr Dhar left the next day Benoy came again with fruits and medicines The medicines were not used in my presence I cannot say if it was used After this Benoy rented a house at Deoghar and brought his wife and children Watery substance was oozing out from the site where injection was given Amar was brought to Calcutta for treatment We next went to Bhubaneswar and thence to Calcutta Babu also went to Bhubaneswar while we were there. We came to Calcutta and then shifted to a house on Jatin Das Road

Before we left for Pakur (on November 26) we went to the Purna Theatre Myself Anima and Amar went to the theatre in our car Gour was the driver We met Rani Jyotirmoyee there Rani Jyotirmoyee went there before us

On Sunday we went to the Howrah Station Myself Amar, Anima and Rani Surjabati were in one taxi When the taxi reached Howrah Station I saw Benoy there Another taxi was standing in front of us I saw Dada making a signal After that he raised his hand and asked our driver to stop He signalled towards our taxi To whom he made the signal I did not see Amar got down went towards the station and returned He then accompanied him Babu was ahead and Benoy was in the rear and we ladies between them Amar passed the gate when he said that somebody had pricked him with a pin I saw a puncture like that of a needle on Amar's right arm He had a jersey, a 'punjabi' and a chaddar I saw a drop of liquid on the sleeves of his punjabi Near the platform I saw Kamalaprasad and Asoke. When we were into the train I saw Kamalaprasad pressing out the arm of Amar When we boarded the train Amar asked for tincture iodine I gave it to him He asked for a knife to slice away that portion No knife was available Amar said that it would have been better if he had got down I asked Amar *Did you see the man? Was he a Bhadralog?* *Amar replied that the* man was not a bhadralog I asked him when I was applying tincture iodine

We reached Pakur from where Amar came back to Calcutta to have his blood examined On receipt of a wire we came to Calcutta with Rani Surjabati Amar died on Sunday night. The "punjabi" which Amar was wearing at the time of the incident was brought to Calcutta. Some

of Amar's clothes I sent with the dead body I don't know if the 'punjabi' was also sent

I cannot say who paid the expenses of Amar's treatment at Deoghar About Rs 8 000 was spent for his Calcutta treatment. Benoy paid about Rs 2 000 the rest was paid by Rani Surjabati

Benoy and Amar were not on good terms but there was no outward quarrel This bad feeling was due to dispute over their money and property

Cross examined by Mr B P Pain for Benoy, witness said "We were in Jatin Das Road for about two months during which time Benoy used to come there Sometimes he came of his own accord and sometimes he was invited When he used to come in our house he used to lie in one bed with Amar On the 'bhaiphota day', I invited Amar by a letter We also went to Benoy's house on Bundel Road Benoy lived there with his grandmother wife and children On the night before we left for Pakur, we went to Benoy's house We went there because we would leave for Pakur the next day I told about our departure to Benoy's wife but not to Benoy or his grand mother We were there for about two hours, Benoy was all along present there Benoy did not ask me about our departure to Pakur That we should leave for Pakur on Sunday was settled about ten days ago

Benoy went to Deoghar I do not remember how many days previous to that Amar had arrived Before Benoy's arrival I saw a blister on Amar's leg Amar opened the blister with a pin Even before Benoy's arrival Amar used to wear coloured glasses when the sun was very bright I did not ask him why he put on the spectacles I do not recollect if Amar had cold when Sourin Babu was first called Before the doctor was called we found that Amar's lips were twisted and that his eye-lids would not close We did not find any mark of injury on his nose

The doctor prescribed an ointment which was used After that Amar felt difficulty in breathing and eating Sourin Babu was again called for He gave one injection On that night Amar had lock jaw, his neck became stiff and he felt jerky sensation Dr Hiren Babu was called on the day the first injection was given

I heard from Rani Surjabati that she had wired to Benoy to bring Dr Atul Babu from Pakur Benoy had a conversation with Amar in writing After Amar had recovered, we used to play at cards

Before Benoy came with Dr Dhar, I heard that he was bringing a doctor When Dr Dhar came, Amar had not recovered completely Dr Dhar did not stay in our house at night He came to our house at night. I did not hear anybody asking Dr Dhar to stay in our house at night. Next day Amar's condition was a little better We heard that Amar's heart was damaged Before Benoy went with Dr Dhar and Dr Sivapada he sent a wire stating that he was coming with doctor I did

not see Dr Sivapada examining the heart of Amar I do not remember if Benoy once went to Deoghar before he went with Dr Sivapada and Dr Dhar Of the many kinds of fruits brought by Benoy, I only gave juice of pomegranate to Amar After that Benoy came to Deoghar on several occasions When Benoy rented a house at Deoghar, we used to visit each other We left Deoghar on the "Dole Jatra Day" and long before we left for Calcutta, Benoy and his family came to our house with red powder. We came to Calcutta where we stayed for about three days We were at Bhubaneswar for about a month On the day we reached Bhubaneswar, Amar had a bath in the "Gouri Kundu" I did not forbid him to bathe there I do not know if Rani Surjabati forbade him owing to his bad state of health

On our return to the Calcutta we stayed in a house on Ashutosh Mukherjee Road where we stayed for over two months Kananbala died in that house She died suddenly after four days' illness One side of her neck was swollen Dr Ramendu Roy treated her, later, other doctors were also summoned she also died on a Sunday morning

When Amar got down at the Howrah Station from our taxi, Benoy did not ask him as to where he was going

At first I saw Benoy making a signal with his eyes Next I saw him raising his hand When he made the signal Benoy was looking at us I cannot say to whom he made the signal I cannot say if he made the signal to our driver or to any other man Benoy called the coolies and had our luggages removed from the taxi Amma was behind Amar and three yards ahead of me I did not see any man coming towards and pushing him I saw Amar examining his arm At that time, I did not hear any conversation between Amar and Rani Surjabati

We halted there for a little while I did not see anything else on Amar's arm except the puncture mark I did not see any liquid on his arm as I saw on Amar's "punjabi" sleeves I did not touch the liquid nor did I see anybody touch the liquid I did not ask Amar to take off his shirt nor do I remember if any body else said so At that time, I did not hear of any talk of our returning to Calcutta I did not remember if Kamala Prasad came to our compartment after he had pressed Amar's arm"

After the train had started, I asked Amar how the incident occurred Amar replied that he could not understand how it happened On reaching Pakur, we met Jnan Babu I had no talk with him about the incident. When Amar returned to Calcutta to have his blood examined, he did not wear the 'punjabi' which he was wearing at the Howrah station. I packed the 'punjabi" along with his other clothings I do not know if that 'punjabi' was shown to any doctor before Amar's death When Amar boarded the train at Howrah, he took the dust of Benoy's feet.

I know Babu Kalidas Gupta I have paid him for this case I

money to Rabi for payment to Kalidas Babu Altogether I have paid about Rs 3000 Rabi told me that he had paid the money to Kalidas Babu

I do not recollect if I told the police that we had been to the Purna Theatre

Cross examined by Mr P N Banerjee for Dr Sivapada witness stated — A wire reached us in the morning and at night Dr Sivapada and Dr Dhar came with Benoy I do not recollect if I told the police that Dr Sivapada reached Deoghar on the day Amar first took rice I did not notice any blood mark on Amar's arm or his clothings at the Howrah Station I didnot notice any needle hole either on Amar's jersy or 'punjabi'

I do not Remember if I told the police that Kamala had pressed the arm of Amar My condition of mind was not very good so I do not remember what I told the police I do not remember if I told the police about Amar s asking for a knife in the train or about my applying tincture iodine

Cross Examination of Kalidas Gupta

Cross examined by Mr B P Puri (for accused Benoyendra) witness stated that he could not say now what were his feelings when Rabindra told him that he would be able to give good evidence in this case He wished to know what was that good evidence

Did you take any step to translate your wish into action ?—When Rabindra came I asked him about the evidence and he made a statement

Did you take any step before Rabindra came ?—I talked with the people of Pakur

But did you take any step ?—I talked to them to send somebody to the police

Did you want to know what the evidence was ?—I do not remember what particular thing was in my mind then They did not know them selve what the case was They only heard certain rumours

Did you reply to Rabindra s letter ?—I did not reply

After the receipt of the letter did you expect Rabindra to come to you ?—I can not say now how I left at that time

Questioned with regard to the note that witness had prepared on the occasion of his interview with Benoy after his arrival at Dumka from Calcutta, witness stated that he did not attach any importance to any particular passage in it but to the whole of it In it he recorded what happened at the time

You expected that these facts may be necessary later on ?—Yes

So in this note you wrote everything important and unimportant which occurred since you left Howrah and reached Dumka ?—So far as myself and Benoy are concerned

You prepared this note after you read Rabindra's letter ?—Yes If I did not receive Rabindra's letter I would not have written it

Further cross examined witness stated that he received a money order of Rs. 35 from Binoy on the 9th January He had no hesitation in receiving the sum because Binoy owed money to him The money order coupon bear the words 'complimentary towards 1934 He did not protest against this

Continuing witness stated that he was not in doubt about the jurisdiction of the case in Calcutta He did not tell Nabu to look for a lawyer in Calcutta and file the petition through him because Nabu entirely entrusted the matter to him

Did you draft this petition under his instructions ?—Certainly under his instructions

Do you want to suggest that this petition contained any matter about which Nabu had not given you instructions ?—I do not want to suggest that. There might be some confusion in my mind or in Nabu's mind

Have you read this petition since you drafted it ?—I have read it 3, 4, 5 or 6 times

Were you shown this draft in the lower court and you said that you drafted it ?—I think I was

And you saw it, read it and said that it was your draft ?—I do not think I read it but I saw it

Did you want to suggest in the lower court that that petition contained some statements which were not correct ?—I did not suggest to the Court, but I informed the Assistant Public Prosecutor that certain statements were not correct

When did you say this to the Assistant P P ?—Before the commencement of the enquiry before the Magistrate

Did you tell the Assistant P P then as to what those incorrect statements were due ?—No, I did not It was for the complainant to say so

On the 10th January when the application was typed, out of the two copies and one original, how many were taken by Nabu ?—He took the original and a copy

Did you come to know if the application was submitted to S P Dumka ? —Yes, I was told that it was filed not by Nabu but by the Inspector of Police in whose hands I found it in the S P 's office

Do you know that the application was submitted to the S P by Nabu himself ?- No I do not

Did you say in the lower court that the application was submitted to the S P by Nabu ?—If I said so, it was a mistake

What did you do ultimately with your copy which Nabu left with you ? —That copy was meant for my office It is [illegible] practice to keep a copy in my office

D[illegible] subsequently [illegible] inforce yourself [illegible] r copies of that state-

ment ?—Yes. Before I came to Calcutta I got another three copies typed in my office.

Had they all been used up ?—I had got one copy for myself. I had given one to the Commissioner of Police, Bombay, and one to the Calcutta police for the Public Prosecutor's perusal.

After the 10th January did you see the copy which Nabu took away ?—Possibly I saw the copy with Ashu on the 17th.

In the statement which you drafted on behalf of Nabu did you hold out any temptation of reward to the Dumka police ?—No, I did not.

Did you expect the S. P. of Dumka to take action on that application ?—He might or he might not.

Before taking any further action did you wait to see what action the S. P. took ?—I did not go to enquire as to what action was taken by the S. P. of Dumka.

When did you go to see the Deputy Commissioner of Dumka ?—On the 13th or the 14th January.

Did you go alone ?—Yes.

Did you want to see the S. P. before you went to see the Deputy Commissioner ?—No, I did not.

The S. P. of Dumka is a European Officer ?—Yes.

And the Deputy Commissioner is an Indian Officer ?—Yes, Rai Bahadur S. C. Mukerjea.

Did you go to him to complain about this matter ?—I did not go to complain but I went there to discuss about the matter.

For your own benefit ?—Not for my personal gains, but for the sake of Justice.

On the 10th of January did you think it your duty to take Nabu *to the custodian of law and order ?—No, I did not. I thought that* if I saw the Deputy Commissioner that would do. There was no use taking another man to him at that hour of the night.

Did you think that you could tell him the story better than Nabu ?—I thought I could.

Did you tell the Deputy Commissioner that an application was made before the S. P. ?—I must have.

On the 15th did you go to him again with Ashu for the purpose of getting an introduction in the Calcutta police ?—Yes.

Having got the D. C's introduction did you yourself or on behalf of your client write to the S. P., Dumka, that you were going to take steps in Calcutta and he had no need to go on further with the case ?—No, I did not. I did not think it necessary.

Are you aware of the fact that the S. P. did not pass any order on Nabu's petition until the 25th January ?—No.

Witness continuing said that he reached Calcutta on the 15th of January and met Kamalaprasad at about 2 P. M. in a bus. Kal[illegible]

he met Kamalaprasad, witness said, he had met a Deputy Magistrate friend of his who is a relation of a high special officer in the police force in Calcutta He had no discussion about the case with his friend

Before drafting the application to the Deputy Commissioner, Calcutta, did you consult any lawyer in Calcutta ?—I did not consult any lawyer I did not think it necessary to consult any lawyer I relied upon my own ability.

In Kamala's petition did you use the expression 'conspiracy' for the first time ?—It was first mentioned in the petition but the conspiracy was there.

Are you aware of the fact that the documents mentioned in the list submitted with Kamala's petition were not made over to the police until the 12th of February ?—My friend B K Ghose told me that these documents were filed on the 22nd January

Who gave you the name of Ganapati Panja ?—I got the name from Mr. S K Gupta

You described Dr Swapnda Bhattacharya as a witness in this list ?—I have not described anybody as a witness I only mentioned these names and places as I thought they would throw light on the matter.

Did you mention these names and places in pursuance of instructions given by Kamalaprasad ?—Yes some of them were given by Kamalaprasad.

Does the original petition bear any endorsement at all or any seal of the police office ?—No

Before Kamalaprasad signed the petition did he read it himself or you read it out to him ?—I do not remember exactly.

Before Kamala signed the petition did you hear him say why what Kamala had seen or knew were not mentioned in it ?—I might have asked Kamala or Kamala might have asked me, but it was not thought necessary to mention them

Did he ask you why even Benoy's name was not mentioned as an accused in the petition ?—If I remember aright his name was not mentioned because everyone was afraid of Benoy

Was that the reason that induced you not to mention his name in the petition as an accused ?—I did not want to take upon myself the responsibility as the party did not want to do it

Whom do you mean by the party ?—I mean Suryabati Kamalaprasad, Rabi and Ashu

Do you know that in Rabi's petition which was filed earlier than Kamala Benoy's name was mentioned several times ?—He was not mentioned there as an accused

With regard to the insurance form, did you say to the learned Magistrate in the lower court that this form was also received by you and you made it over to the police ?—No The Magistrate might have made mistake.

Further questioned witness said that he returned to Dumka on the 22nd morning from Calcutta Benoy saw him in the court and in his house Benoy did not stay at his house even for a minute but left saying 'Pakur people are dangerous'"

Cross examination of Babu Srikrishna Bajpai

Cross examined by Mr H N Misra for Benoy, witness said "I told the Police that Benoy paid the bill It may be that I did not tell the Police nor in the lower court that Benoy was talking to his companion at the Kelner's refreshment hall at Howrah I do not know Kalidas Gupta Pleader of Dumka I know Kamala Pande From his appearance it appeared to me that Benoy's companion was not a 'bhadralok' I noticed the appearance dress and complexion of Benoy's companion I noticed the man out of curiosity I thought if Benoy's companion could be a man of Pakur

Babu Tulsi Charan Bose—Exm In Chief

Babu Tulsi Charan Bose said About the end of November on a Saturday I went to the Howrah Station at 9 30 P M Srikrishna Bajpai, Kumud Behary Bose and Kalikinkar Mukherjee were with me. We went to Howrah in Srikrishna Babu's car We went to the Kelner's I found Benoy in the refreshment room He is in Court He had a companion They were having a drink on a table to the right Benoy's companion was of short stature and had a dark complexion and had a shirt which appeared to be of Khaddar I knew Benoy at Pakur I had stone quarries business at Pakur Three or four minutes after we had entered, Benoy and his companion left the place I did not notice who paid their bill Bajpai was going to Sitarampur Kumud Babu was going to Deoghar'

In XXn—

Cross examined by Mr H N Misra for Benoy, witness said "We consulted watch when we left for Howrah Bajpai was to leave by the 10 20 passenger train I went to see him off I came back in the same car My complexion is dark

I made a statement to the Police in the middle of March I did not know before that the Police would take my statement I cannot say how the Police came to know that I had seen Benoy at Howrah Station When I went to Pakur and heard about the case I told some one there that on the previous day, I had seen Benoy at Howrah Station I went to Pakur in March last I told some one of the officers of the stone quarries I think I told H K Mukherjee in whose house the matter was talked out

I took a lemonade in Howrah Refreshment hall I do not take wine All four of us took lemonade I had no talk with Benoy or with his companion in the refreshment hall I often go to Howrah Station to see off Bajpai but I do not remember if I went to the Station in April for that

purpose. The house where I use to stay at Pakur during 1932 33 is three minutes walk from Rabindra Babu s house "

Replying to jury witness said The age of Benoy's companion may be about 30 He appeared to me to be a Bengali Benoy s house will be about a mile away from my office at Pakur I never went to Benoy's house.

Ramjas Rai—In Chief

"Ramjas Rai driver of Rani Jyotirmoyee, stated I knew Amar "

"Two days before his last visit to Pakur Amar had been to Purna Theatre Rani Jyotirmoyee had also gone there We arrived first When Rani entered the theatre she asked me to tell Amar that she had already arrived Amar s driver was Gour On Amar s arrival I told him what the Rani had said There were ladies with him Amar s car stopped in front of me I know Benoy who is in Court. Benoy also came to the theatre on that day in a taxi He had another man with him The man was of dark complexion Benoy went inside the theatre Five minutes later he came out took the man from the taxi and again went in They came out again and were moving about Half an hour before the show was over Benoy left the place After Benoy's arrival Dr Atul Babu's son came there He is known to Amar s driver He spoke to Gour who was sitting in my car I told Rani Jyotirmoyee about the incident after she had come back from seeing Amar during his illness

In XXn—

Cross examined by Mr B P Pain for Benoy, witness said 'This talk was going on between me and the inmates of our house all along before the police came I came to know of Amar s death the very day he died I heard it in our house I took Rani Jyotirmoyee to Amar's house on the evening of the day Amar died when the ladies were about to start for Howrah We were then living in Indian Mirror Street I was examined by the police in February No one told me that the police would come and that I would have to make a statement

I do not remember if I saw Kamala Babu after Amar's death and before my statement to the police I do not remember if I had any talk with Kamala Babu Before I was examined by the police He used to come to our house I know Rabi Babu I did not meet him before I was examined by the police Rani Jyotirmoyee's father Mr Trivedi also lives in that house

' I do not remember the time when we reached the Purna Theatre Rani had other ladies and men with her Rani and all her companions e[illegible] the theatre Rani did not leave with me any tickets for Amar his party I kept my car on the left side facing north A little the north of the theatre is a road running east to west. On that there were not many cars there. When there are many cars,

are parked from the crossing of the road to the north of the theatre I stopped in front of the theatre and they got down When Amar's car came I backed my car and the other car stopped in my front. Benoy came about ten minutes after Amar and stopped behind my car At that time there were only three cars—my car Amar's car and the taxi When the show was over others came When Benoy came he did not ask me anything The man who came with Benoy was of dark complexion I did say in the lower court that Benoy got down from the taxi while his companion stayed in the car I think I told the police that the man was dark I told the police and in the lower court that Benoy came out after five minutes and went near the taxi. I was there for a long time I did not count how many times Benoy and his friend went in and came out I had no suspicion at their movements I had a talk with Gour as to why Benoy was moving about in that way I did not see Benoy and his man purchasing tickets Neither I nor Gour did approach Benoy and enquire whom did he want When the show was over I did not tell Rani Jyotirmoyee and Amar about Sadhan's presence there

Babu Rajani Kanta Das Exm In Chief

I do not remember if I mentioned in the lower court the presence *of Atul Babu's son at the theatre.*

Babu Rajani Kanta Das a witness stated 'I knew Benoy who rented the ground floor of my wife's house at Bundel Road Babu Naresh Chandra Sanyal settled the terms with me At that time Benoy was guest of Naresh Babu Benoy left my house on the second week of December He occupied the house in August. Benoy lived there with his wife three children and one old lady During the latter part of his (Benoy's) stay in that house I found in the house another man with long hair and beard That would be about 15 days before Benoy's departure I do not know if he was an employee of Benoy I do not know if Naresh Sanyal was arrested in this case

XXN

In his cross examination witness said Naresh Sanyal is an employee of the Imperial Bank I do not know if he is an accountant there As far as I know, he has his own house"

Babu Indubhusan Mukerjee Exm In Chief

Babu Indubhusan Mukherjee Sub Registrar of Shahanagar burning ghat, said 'We keep a death register of the bodies burnt there. In that register the informant signs his name and the name of the doctor who attended the patient is also entered and the certificate if brought is also filed in the office Before burning we inspect the body Amarendra's body was brought to the ghat on December 1 The informant was Benoy On that day Nalini

Mukherjee was officiating at that time. I was not on duty then Nalini Mukerjee was arrested in connection with this case

In XXX

Cross-examined by Mr Puri witness said ' Nalini was arrested brought in Court and then released Many bodies are brought in the ghat whose causes of death cannot be given by the persons who bring the bodies We ask the symptoms the persons were suffering from and then write out the cause by guess If satisfactory answers are given, no certificate is necessary If there is suspicion a certificate is necessary If there is any injury on the body, we inform the police If there is injury and also a doctor s certificate, there must be an order from the police before the body is allowed to be burnt.

In re-Exm

Replying to Mr P N Banerjee for Dr Sivapada witness stated 'Even if a medical certificate is brought we examine the body and question the informant And if we are satisfied that there is no foul play, we allow the cremation '

BHOWAL SANNYASI CASE

Handwriting Expert s Cross Examination

At the hearing of the Bhowal Sannyasi Case Mr Charles E Hardless Handwriting Expert was cross examined by Mr B C Chatterji Shown a specimen of handwriting witness said that it was a specimen of stepped writing of the class of stilted descending stepped alignment Witness was the author of The identification of Handwriting which was no longer an authority on the subject But the main principles in the book stand If any passage from the book is cited in favour of the plaintiff it might or might not be an authority If anybody writes with the side of the writer as the pivot it was both wrist and forearm writing Then he said if the pivot was above the wrist then it would be finger movement and if it was below the wrist then it was both wrist and forearm movement If the wrist was fixed it would tend to an arch writing If the fingers of the writer were long he would be able to write two letters but if his fingers were short he would not be able to write more than one letter at one stroke if he were a finger writer

Q Do you remember that you and your father had lively discussions in public about your respective merit

Ans May be

Witness had written his book when he was a boy

Q Do you agree with the passage in your book speaking generally writing done with the elbow as the pivot or centre of lateral motion tend to an even alignment while writing done by the wrist as the pivot ter an arch alignment ?

Ans Yes I still adhere to this passage of my book

fact that writer's cramp makes the subject write angles where they used to write curves and that it brings on tremors when the subject is writing ?

The learned counsel for the plaintiff said that it was quite clear from plaintiff's writings throughout including his writings made before 1909 that he had always had writer's cramp and suffered from it badly with advancing age. The last item of the plaintiff's signature was a very good example of writer's cramp of a serious type. Mr Chowdhury asked whether it was caused by excessive writing. Mr Chatterjee said that his client's cramp was not due to excessive writing.

Ans. Let me think—(then says) A cramp in writing would affect the legibility of one's writing. It may produce tremors but it does not give any uniformity as in the signature of the plaintiff in his memorial.

I am talking of cramp and not of writer's cramp—I don't know what is writer's cramp. I am talking of cramp caused by cold or pain and by twitching of muscles.

About angles witness said that he could not say if a cramp would cause angles or not. A man should lose control over his pen in cramp.

Witness could not say if cramp produced a pen jerk.

Slant in writing increases with speed. Slant decreases with lesser speed.

One of the defects of freehand forgeries specially in regard to signature is the attempt to render the forged signature more legible than the genuine one.

Q. Do you agree that the character of handwriting varies at different parts of one's life ?

Ans. Yes some, not all.

Witness knew that lots of handwriting deteriorate with age. Witness had his instructions in this case verbally. He had particularly studied the effect of age on the deterioration of writing. Witness did not hear any of them complaining about the writer's cramp. In course of witness's long experience he had no occasion to deal with a single case of writer's cramp. He had no experience either of anybody who had given off writing altogether for 12, 15 or 20 years. Disuse might modify some of the habits of writing. There was an expert named Daniel Ames.

Q. Do you accept the proposition that an accountant or clerk after a long vacation finds it difficult to resume his duties with accustomed facility ?

Ans. Yes.

Q. Do you claim to prophesy how disuse for 12, 15 or 20 years would affect the writing of the writer of the signatures of the Kumar ?

Ans. I can say that he cannot lose the reflex habit in writing and some of his previous writing habits would be retained.

Q. Have you noticed the pauses and tremors of the writings of the Kumar ?

Ans They do occur in rare instances

Q Have you discovered pen lifts in the Kumar's signatures besides at the end of a in Ramendra and at the end of the next big N ?

Ans Yes

As a man grows older tremors would appear in more places in his hand writing There are spaces between points of tremor With age these spaces would not necessarily become shorter and shorter

Q Do you agree that a person having perfect muscular co ordination between the extensor and intensor may form both garland and arched carves ?

Ans Yes

Q Do you agree that there is similarity between the signatures of the plaintiff in the memorial and those he had subsequently written ?

Ans Yes

According to the witness the plaintiff's signature on the memorial was written from a model of the Kumar's signature

Q Do you find any resemblance between the plaintiff's signature on the memorial and the Kumar's signatures ?

Ans Yes remote resemblance

Q Did I understand you to say that the writing capacity and skill such as you find in the plaintiff's freehand signatures done before the court are of a very poor nature ?

Ans No I did not say that I did not make any distinction between the signatures in court or out of court except the signatures on the memorial

The writing capacity of the plaintiff was of a very low order

Q Do you assent to the proposition that the forgery of an unskilful writer was of a physical impossibility

Ans No This sort of forgery is called crude forgery

The first characteristic of crude forgery is the similarity in appearance as much as the forger is capable of

This sort of forgery may result in total dissimilarity in appearance If a forgery resulted in total dissimilarity then he was an utter failure although the forger would not be able to understand it The slants given by the witness about the writings of the plaintiff and the Kumar were not absolutely correct Allowances may be given upto 10 per cent The uniformity of slant was not the evidence of skilled writing The test of pen scope had not been entirely abandoned by the handwriting experts The principal object of putting in synthetic signatures in court was to show the culminating proof of the reasons about the handwriting of the Second Kumar advanced by the witness If the writings were not the same the synthetic signature was not possible

Q Do you agree that the system of comparison by formation is to the least very unsatisfactory test of identity ?

Ans I don t say this now

Q I am putting it to you that you have to differ from the considered opinion You put down in your book because otherwise the whole of your evidence in this case would just be a little joke ?

Ans That book was written 20 years ago when the formation was the only test of identity among the experts of that can not including myself and my object as an expert was to advance the test of writing and at the same time to point out that comparison by formation alone is not a safe guide. I still maintain that the comparison by formation is not the safe guide

Cramp in a man's finger would make some parts of his writing slow and some parts rapid The rapid parts would not represent the loss of pen control The rapid part might correspond to a jerk Witness could not say whether cramp in a man s finger would accelerate his writing speed or the speed would be less There was no rule about it There would not be uniformity in the man s writing He would not himself know what his next stroke would be

CASE AGAINST MR NALINI RANJAN SARKER

Prof Pramatha Sarker Cross Examined

At Wednesday s resumed hearing at the case against Nalini Ranjan Sarkar before the Hon S K Sinha Chief Presidency Magistrate Mr pramath Nath Sarker the complainant was cross examined by Mr A K Roy Advocate General appearing for the accused

Witness said that he remembered saying on the previous day that he did not recollect if he had asked Bina to accompany him to Feni at the end of the Pujas of 1931

Did you pay for the delivery charges of your wife ?—I sent Rs 25/ to my wife for the pin money

Witness said that he did not send money for the Hospital expenses

The Court—Where were you then ?—I was at Feni

In reply to a further question witness said that he sent Rs 25 and a further sum of Rs 40/ or 45/ in July or August to his father in law who requested him to send some money for the confinement expenses of his wif

Mr Roy (to witness) Did you come to Calcutta after the birth of the child ?—No

The Magistrate When did you come to Calcutta ?—In October

Mr Roy (to witness) Kindly look at the handwriting of a letter (shown)

Witness said that he came down to Calcutta in May and June 193 Witness might have stayed for 2 months in Calcutta and that he put up at the Y M C A Hostel

How is it that you did not mention these before the Court ?—Did I not mention ?

Witness said that he occasionally visited his wife During this period his wife had been in advanced state of pregnancy and he did not think it

desirable to stay with her at his father in law's house Witness did not come to Calcutta in the mo th of August at all

In reply to the Court witness said that for the first time he saw the child in October 1933

Here a letter dated the 8th August 1933 was shown to witness and tendered. In this letter he said he would be sending money for hospital expenses.

Did you get a telegram about the birth of the boy from your father in law ?—Yes

Shown a letter dated 14th August witness said that he wrote this letter enquiring of the health of Bina and the child

Shown a letter dated 17th August 1933 witness said that he *still* maintained that the boy was not his Witness also said that though he wrote 'I am glad that a son is born to us' certainly he was trying to deceive his father in law by being over enthusiastic Witness did not know how much money was paid to the Hospital authorities as expenses It might be Rs 7/- per day and for 10 days Rs 70/ was paid

The Court—Had you ever told your father in law as to who was the father of the child ?—No

Mr Roy (to witness) Does not that shew enthusiasm from the letter dated the 17th August 1933 that the male child was born to you that by mutual arrangement it was arranged that you would look upon the child as your child ?—Yes though I am not the father

In reply to a further question witness said that three weeks after the birth of the child whose father was the accused he was writing to his father in law to use his influence on Nalini Kaka (accused) to get a job in Burdwan College as Professor of Economics It was he said for his self interest that he did write to him

The Court —Do t you realise that you are allowing your wife to prostituting herself by giving such answers ?

Witness did not give any answer to the question

To Mr Roy witness said that he wrote such enthusiastic letters to his wife because he promised her to look upon the boy as his own child

You wanted the Court to believe that you named the boy as Arun Kumar because he was a b——d ?—Yes

Witness qualified his answer by saying that because Karna who was Sun's son was a b——d he kept the boys name as *Arun Kumar*

In the postscript of the letter dated 5th April 1933 there was a mention of two books These books he said were on Midwifery

In the letter dated 14th of April 1933 witness said he wrote it to his wife not to move about too much On the 17th of April 1933 witness wrote a letter to his wife from Leni This was after his wife left Leni on the previous day In that letter he wrote to his wife that his mind and heart were blank This was only due to the absence of his wife Witness was on friendly terms with her

You seem to have read very carefully the evidence you gave before his honour ?—Yes

Do you remember that His Honour was finding out why you took such a long time to file your petition of complaint ?

Witness explained that from Hindusthan Buildings he left for Krishnagar

What was your real intention to go to Hindusthan Buildings ?—To investigate into the conduct of my wife

Did you intend to see Nalini on that day ?—Yes That was a mere pretext

You did intend to see Nalini to give a job to Benode ?—Yes

In reply to a further question witness said that he went to the Hindusthan Buildings as on Sundays generally his wife visited Nalini That was the information he got from his nephew Bimalendu

The Court Your wife lived with you at Feni up to the month of April '33 ?—Yes

You stated that before the birth of the child you came to know in December 1932 that you were not the father of the child ?—Yes

And when you came to know that did you tell your father in law that Nalini was responsible for the condition of your wife ?

I never said so to my father in law or mother in law

Proceeding witness said that he never told his mother that their daughter had been put into delicate state by the accused Witness did not warn the accused about this because he believed the word of honor of his wife It was during the Pujas of 1933 because at that time her manner was cold and also that she refused to go to Feni Witness then suspected that she had been seduced by the accused Witness did not warn the accused because her mother was responsible for her condition Witness did not tell anything to his father in law because it was useless telling him as he was a puppet in the hands of the accused After he had seen that his wife had broken the word of honour even then he did not warn the accused not to meet his wife—nor did he threaten the accused with legal proceedings

The Magistrate—You are a human being, you are not beast, and still when you saw poor wife again meeting with the accused secretly, when you know that your wife has been outraged by the accused what made you remain silent ?—Because the accused is a powerful man

Why did you then go at all on 17th June to the accused s place ? I was courageous enough to give an introduction to Benode

Further cross examined by Mr Roy, witness said that his primary object was to see whether his wife was not faithful to him His intention was to see what his wife did there Benode was a chance comer and so he took him

Witness further said that the incident of 17th June was only a summing up.

Mr Roy It is Your Honour s function to sum up

The Magistrate Your business is not to sum up So in future be careful to explain fully.

The Magistrate Your primary object is to trap your wife ?—Yes

In reply to a further question by the Court witness said that he conceived the idea of trapping his wife in October 1933

The Magistrate What do you think more honorable—a few rupees as train fare or your wife's honour ? My wife's honour is certainly more honorable but I did not try to find it out before June 17 1934

Witness further stated that he did not suspect any apprehension on that day, i e, on 17th June of being thrashed by the accused So he intended to introduce Benode on business transaction the accused being the Manager of Hindusthan Insurance

In reply to Mr Roy witness said that on that day he went inside the door of the Hindusthan Buildings and asked the Darwan if Nalini was in The Darwan said that Nalini was inside He asked Benode to wait because he suspected that his wife might be coming there on that day They stood there for 40 minutes on the pavement

To Court witness said that he saw his wife coming there and entering the door after about half an hour

In reply to the question of Mr Roy witness said that he went upstairs after about 70 minutes That would be about 3 30 p m

To Court witness said that he gave his version to Capt Kerr in his office On the following morning Mr Lewis drafted the complaint in his presence and he told him the whole story Mr Lewis and Capt Kerr worked whole night and up to the early hours in the morning

Proceeding witness said that on that day at about 3 30 p m they went upstairs of the Hindusthan buildings but did not meet anyone there

Witness went to the flat of the accused on several occasions When he used to come to Calcutta after first six months of his marriage he went to Nalini's flat and he used to treat him with tea

Here witness was shown a plan of the Flat and he said that it was a correct plan

Witness explained the location of the different rooms in the flat and said that all the doors were either ajar or bolted The bedroom door was ajar Witness said that when they were about to enter the bedroom a servant came with a smiling face by the passage Witness did not find anybody there

You are suggesting that you could steal away anything if you liked ?

Witness said that when they were about to reach the bedroom, the servant came He did not tell Benode that he was going to trap his wife When he used to go on previous occasions he used to go inside the bedroom and sit there

To Court witness said that he had a pair of rubber soled shoes and Benode had ordinary shoes

Did the servant speak to you in a natural tone ?—Yes

Did he shout ?—He whispered

What did you do ?—We dashed in but did not say anything

Proceeding witness said that he asked Benode not to create any noise or disturbance

The Magistrate —Why were you extraordinarily reticent to Benode ?—Because I did not think it necessary, and if I had told him all about this Benode might not have accompanied me

Mr Roy —Your idea was to make use of Benode as a chance witness ?—Yes

Why did you not ask Bibhuty or Bimalendu about this ?—Because Bibhuty was older and Bimalendu was younger than me

In reply to a further question by the Court witness said that he did not take Bimalendu lest they might see Bina in a compromising position with the accused

Mr Roy —Then you meant to trap Benode to make a witness ?—Yes

Was the servant you spoke of a Bengali speaking servant ?—Yes

Was his name Sarada ?—Yes

Proceeding further witness said that as he entered the bed room he found his wife in the arm of Nalini

Did that please you ?—Never

What did you do ?—After the accused went into bathroom I was approaching her to give her a lesson when Benode pulled me out Benode asked me not to create a scene and we all came down I got excited

But still you were very angry ?—Yes

The Magistrate —Why did you not go to the Police Station ?—I was prevented from doing so by Benode as he said it would be a family scandal

Mr Roy — And you managed to bottle up all your anger when Benode prevented you ?—Yes because according to Hindu sentiments it is not proper to bring about a scandal

Why did you not consult a lawyer about it ?—I consulted my brother in law Bibhuti Babu

Why did you not write to Nalini ?—Because I wanted to get rid of my wife

Are you very anxious of getting rid of your wife ?—Yes

And that is the reason you invented this story of adultery ?—No.

The Magistrate —When did you conceive of the idea ?—After the incident at Hindusthan Buildings

Mr Roy —When did you for the first time conceive the idea of getting rid of your wife ?—In October 1933

With that idea in your head you were still enjoying the hospitality of your father in law ?—In order to investigate into the conduct of my wife as I discovered that from the letters and diary I read

Did you not write out in your diary that you had seen your wife in adultery with Nalini ?—I generally do not write diaries

The Magistrate —Did you write anywhere on record that this child is not yours ?—In October 1934 I consulted my lawyer about it

Mr Roy —You said that you saw your wife coming in open Saloon Car ?—Yes. That car might have been disposed of

Did you hide ?—No.

Did you want her to see you on the pavement ?—No

When you saw your wife did Benode see her ?—No

Benode knew your wife Did nt he ?—Yes

Witness said that Benode was at that time facing the market He did not bring the car or his wife to the attention of Benode Benode had not the slightest idea as to why he was standing on the pavement

Was Benode looking after your litigation ?—No

Why did you say in your petition of complaint that Benode was an acquaintance of yours ?—I told my lawyers that Benode was my relation but the lawyer said that it did not matter if he put him as my acquaintance.

Why did you and your lawyer go to Krishnagar ?—For getting an affidavit of Benode lest he might be tampered with

Do you suggest that your lawyer told you that I don t believe your story until I get an affidavit from Benode ?—No

And on the very next day you went to Solemari and had the affidavit sworn ?—Yes

And you bottled up from rage ?—I gave my reasons

Further questioned witness said that he had suspicion about his wife in 1930 He did not then find any offence in her Barakaka giving her some books

In April or May 1930 witness read the book Rameshdar Atmakath

Mr Roy —Do you know that this book was not issued before September 1930 ?—

Here the Advocate General put in the publication of the book in the Calcutta Gazette on the 14th September 1930

Why was the difference of date ?—It might be later

Do you know as a Professor you could read the book ?—Everybody reads it

Do you know the book was proscribed ?—Yes

From whom did you get this book ?—From another Professor of Feni College

Does the Calcutta University know that Professors of Feni College indulge in 'Rameshdar Atmakatha

Proceeding witness said that in October 1933 witness came to Calcutta. He was there for three or four days and he stayed at Krishnagar for so[me] time Witness took action only by publishing a notification in a news[paper] Witness was sent to Rangoon on a College deputation during the X[mas] Witness came to Calcutta in Feb 1935 to attend the Examiners'

If Bibhuti had not shown him the Kheali he would not have stated these proceedings

When did you conceive of the idea of starting legal proceedings? On the 24th February 1935 as advised by my lawyers

Why this extraordinary haste?—The lawyers told me if I did not file the complaint on the 24th February it would be too late

Why was this haste?—Because they advised me that it would facilitate divorce

In reply to a further question witness said that he had intention to punish the accused

In reply to the court witness said that there was no truth in the suggestion that he and his Solicitor put their heads to concoct this case to screw out some money out of this accused

Mr Roy I am suggesting to you that you came to this court because you thought that you would be able to put some screw on the man?—Not at all

Mr Roy I am suggesting to you that it is a blackmailing and a false suit?—Not at all

Mr Roy (to witness) You won t accept my suggestions and I will have to prove them

Who is financing you now? I have got a loan from our College Provident Fund I have also got Rs 250 from cash certificates and Rs 600 from my aunt

Did you ever ask Nalini Ranjan Sarkar to help you in connection with your application for a Professorship of Victoria Institute?—I do not remember

Do you remember getting a letter from Nalini to the Ex Mayor of Chandernagore to get a Professorship of Civics in the Chandernagore College?—Yes

Mr Roy (to witness) And you have been getting help all along in these matters from Nalini?

No answer

Do you remember having torn or burnt up two letters which you yourself had addressed to your wife?—Yes

In the letter dated 23rd February (shown) you remember saying about your wife wanting in womanhood?—Yes

And you also stated that your love for your wife was as deep as the Pacific Ocean? (Laughter)?—Yes

And you were continually obnoxious to your wife and had to apologise to her all along?—That was because I loved her

And that you wrote I would not have been happier if I were married elsewhere? —Yes

Do you know Dr Sisir Kumar Mitter?—Yes

Do you tell him at all about the incident of June 17?—No

This closed the cross examination of the witness

BOOK IV.

CHAPTER XII.

POLICE.

1 The provisions of the law in respect of informations and the investigation of crime are contained in the Criminal Procedure Code and in particular in Chapter XIV of that Code

2 (a) The first information of cognizable crime mentioned in section 154, Criminal Procedure Code 1898 shall be drawn up by the officer in charge of the police station in P R B Form No 38 in accordance with the instructions printed with it

(b) The first information report shall be written by the officer taking the information in his own handwriting and shall be signed and sealed by him

(c) The information of the commission of a cognizable crime that shall first reach the police whether oral or written shall be treated as the first informat on It may be given by a person acquainted with the facts directly or on hearsay but in either case it constitutes the first information required by law upon which the enquiry under section 157 Criminal Procedure Code shall be taken up When hearsay information of a crime is given the station officer shall not wait to record as the first information the statement of the actual complainant or any eye witness

(d) A vague rumour shall be distinguished from a hearsay report It shall not be reduced to writing or signed by the information but entered in the general diary and should it on subsquent information prove well founded such subsequent information shall constitute the first information

(e) When a telegram or telephone message reporting the occurrence of a cognizable offence is received the officer in charge of the Police Station shall treat this as a first information report under section 154 Criminal Procedure Code The telegram or telephone message shall be attached to the first information report form and sent to the Magistrate

(f) Police officers shall not defer drawing up the information r... until they have tested the truth of the complaint They shall not ... the result of medical examination before recording a first i... when complaint is made of grievous hurt or other cognizable crime.

(g) A constable left in charge of a station shall not accept any complaint, or prepare and submit the first information report of any crime reported to him He shall enter an abstract of the information in the general diary and report the fact to the officer in charge of the station, sending the complainant or information with a note of the case to him If the information relates to the occurrence of heinous crime he shall send immediate information to the circle inspector, and if the facts of the case as may occur in dacoity, murder etc require the immediate apprehension of the accused, he shall take all possible steps to effect arrest.

(h) First information reports, once recorded shall on no account be cancelled by station officers

(i) In all first information and other reports the jurisdiction, number of the village concerned, as entered in the vandyked map, shall always be noted

4 (a) A first information shall be recorded in respect of every cognizable complaint preferred before the police, whether *prima facie* false or true whether serious or petty, whether relative to an offence punishable under the Indian Penal Code or any special or local law This does not apply to cases under section 34 of the Police Act V of 1861, or to offences against Municipal, Railways and Telegraph bye laws

(b) It has been laid down in rule 327, that when a police officer has been assaulted in the performance of his duty as a public servant he shall obtain the previous permission of an officer superior in rank to a sub inspector before instituting a case, where this can be done without detrimental delay The responsibility for complying with this order rests with the police officer who complains of an assault When first information of such an offence is given, the officer in charge of a police station is bound by the provisions of section 154 of the Criminal Procedure Code to record a first information

(c) Sections 21, 22 (I) read with section 23 and section 24 of the Criminal Tribes Act (III of 1911) are cognizable by the police and in case under these sections, first information reports and charge sheet shall be used For an offence under section 22 (2), which is non-cognizable a report shall be submitted to the Magistrate for his taking cognizance and the offender shall be arrested by an officer in charge of a police station or any police officer not below the rank of sub inspector, no other police officer being empowered under the Act to arrest without a warrant

In cases involving loss of property, the complainant shall be required to put in a list of the property stolen signed by himself, which shall be sent to the court officer with the first information report The investigating officer shall keep a copy of the list to aid him in his enquiry If the complainant is unable to furnish a list of the property when he

gives the first information, he shall be required by the investigating officer to supply a list in writing as soon as possible after the arrival of that officer at the spot. The investigating officer shall forward it, duly signed by the complainant to the court officer Every effort must be made to secure from the complainant at the time when the first information is recorded the most precise description of the stolen property

5 (a) When the theft or loss of a Government currency note of the value of Rs 50 or upwards is reported, immediate intimation of the loss, together with the serial letter and number of the lost note shall be sent to the Superintendent, or to the Assistant to the Deputy Inspector-General, Criminal Investigation Department direct if, by so sending it time would be saved

(b) Under the Negotiable Instrument's Act any person who receives a note in a bonafide transaction, not knowing it to have been stolen, is a legal possessor thereof, not with standing that it may have been previously stolen and the currency office cannot legally refuse to cash it. If, however, the presentor of a note is manifestly in dishonest possession of it, the Currency office shall pay him the value and point him out to the police Early intimation of the serial letters and numbers of lost notes, therefere, shall be communicated to the Assistant to the Deputy Inspector-General Criminal Investigation Department when information is given either at the time of the loss or afterwards that a note has been stolen or dishonestly received, and when resonable ground for suspicion that such an offence has been committed are adduced the police shall enquire into the matter In other cases, viz where a lost note is presented for payment by some person other than the loser if cases of mistake are excluded it may be safely said that at least the offence of criminal misappropriation (section 403 Indian Penal Code) has been committed in respect of the note by some one But the police have no jurisdiction to enquire *suo motu* into the offence of criminal misappropriation and accordingly they should merely report the facts to the Magistrate and take no further action, unless he orders an enquiry It is left to the Magistrate to exercise due discretion in ordering such enquiry

6 (1) Under the Currency Code all forged notes are to be sent to the police for enquiry On receipt of a forged note from any source an enquiry should be undertaken regarding its origin and report sent immediately to the Currency Officer, Calcutta a copy being sent to the Deputy Inspector General Criminal Investigation Department. This report should contain the following information regarding each note o series of notes —

(a) Denomination
(b) Serial letters and number
(c) General number

(*d*) Circle and date of notes of old type
(*e*) Place of appearance
(*f*) Date of appearance
(*g*) Whether Process or Hand made

(2) If there is any probability of the guilt of the utterer or forger being established, a case should be formally instituted and thoroughly investigated by expert officers The Superintendent of Police is responsible for seeing that proper discrimination is displyed, both in the matter of instituting appropriate cases, and in specially reporting such of these as are required to be reported in accordance with serial 8 Appendix VI

(3) On the conclusion of enquiries, where cases are not instituted final reports should be sent in continuation of the first reports showing the result of the enquiries made and quoting in each case the number and date of the first report

(4) When cases are instituted but not specially reported, the short histories referred to in the remarks column against serial 8 of Appendix VI should be submitted, quoting the reference to the report submitted in accordance with paragarph 1 above

(5) Should a case be sent up in charge sheet a copy of the Judgment should be sent along with final report.

(6) Particular attention should be paid to the investigation of dangerous forgeries i e, those which are sufficiently good to deceive persons accustomed to handing notes as such cases are reported by the Deputy Inspector-General, Investigation Department, to the Director, Intelligence Bureau Simla for the information of the Government of India. The reports on such forgeries should include information regarding the area in which the notes have been circulated, whether there is reason to believe that a large number have been put into circulation, and whether the investigation has led to the detention of the forgers of any other known series of dangerous forgeries

(7) On conclusion of each enquiry the forged note is to be sent to the Currency Officer along with the final report unless it has been received from a Treasury Officer, in which case it should be sent through him

7 (*a*) The first page of the first information report, *viz* that signed sealed or marked by the complainant or informant under section 154 Criminal Procedure Code shall be treated as the original It shall be sent without delay to the District Magistrate or the Subdivisional Magistrate, as the case may be, through the court officer The first carbon copy of the first information shall be sent to the Superintendent of Police The second copy shall be kept at the police station for future reference A copy (not carbon copy) shall be sent to the circle inspector direct at the same time as the original and the first carbon copy are

despatched to the court officer and the Superintendent of Police In subdivisions where there is a Subdivisional Police Officer two copies of the first information report shall be made out on ordinary paper by the carbon process one for the Subdivisional Police Officer and the other for the circle Inspector

(b) On receipt of information of the commission of any of the offences mentioned in Appendix VI and of any serious offence by a police officer, the officer in charge of the police station shall despatch a report by telegram if possible (otherwise by the quickest means) to the Superintendent of Police, and to the circle Inspector If necessary the neighbouring police stations shall be similarly informed In the case of dacoity a telegram shall be sent by the officer in charge of the police station to the Criminal Investigation Department and in dacoities by the bhadrolok class to the Intelligence branch If no telegraph office is within reasonable distance of the police station the Superintendent of Police shall on receipt of information despatch the telegram The officer in charge of a police station shall in his telegram to the Superintendent of Police and circle inspector state the other places to which telegraphic information has been despatched

(c) In the telegraphic reports of dacoities all available details shall be given as concisely as possible e g use of firearms, nature and value of property stolen class gang and country or persons concerned or suspected name of village of occurrence with distance and direction from police station and any other detail likely to be of assistance to the Criminal Investigation Department of Intelligence Branch Officers in charge of police stations bordering on Assam or Bihar and Orissa should also wire information to the Criminal Investigation Department of that province

(d) On the occurrence of a case of professional poisoning the Superintendent of Police shall telegraph the fact to the Criminal Investigation Department and report if the services of an officer of the department are required

8 (a) When the report of a crime mentioned in clause (b) of the preceding rule or triable exclusively by the court of Sessions relates to an occurrence outside the jurisdiction of the officer to whom the report is made, he shall at once send information by telegram whenever possible to the police station in the jurisdiction of which the occurrence took place and if the circumstance of the case warrant it shall effect the apprehension of accused

(b) In cases where the officers of two or more police stations have jurisdiction in respect of the same offence and complaint is laid simultaneously at such stations the police officers concerned shall apply to the Superintendent for instructions before submission of the final report When complaint is laid in two districts regarding an offence, which is cognizable in either district (section 182 etc Criminal Procedure Code), the final report shall be submitted in one district only

9 (a) Where a gang of professional criminals is known to exist it is the desire of Government that the members should be prosecuted as far as possible on individual charges If however this procedure fails to break up the organisation a gang case under sections 400 and 401, Indian Penal Code should be instituted provided the evidence appears sufficiently strong to warrant this action after the confession of an accomplice has been verified or otherwise In this event the Deputy Inspector General Criminal Investigation Department will assume control of the investigation and proceed in accordance with rule 553 and will have all the evidence available collected and the usual statements prepared by an officer of his department with the assistance of the district police where necessary On completion of the enquiries he will consult the District Magistrate and Range Deputy Inspector General concerned and if superior legal advice is needed the Legal Remembrancer and will order the institution of the case if this course of action is agreed upon

(b Though no exact rules can be prescribed for the investigation of gang case as each case has its peculiar features the following general instructions are laid down for the guidance of police officers in such cases

Evidence on the following points must always be sought for and obtained if possible —

- (i) Evidence of the existence of a gang for the purpose of committing dacoity robbery or theft during the time specified in the charges (established by proof of facts as contemplated in section 10 of the Indian Evidence Act)
- (ii) Evidence of the association of the suspected persons for the purpose of committing dacoities or thefts
- (iii) Evidence of relationship by blood or marriage amongst the members of the gang
- (iv) Evidence in corroboration of the approver s statement on material points as contemplated in section 114 (b) of the Indian Evidence Act duly verified by a responsible police officer
- (v) Evidence of confessions of co accused previously recorded at different times and places (vide sections 30 and 114 of the Evidence Act)
- (vi) Evidence of specific cases of dacoities and thefts committed by the gang
- (vii) Evidence of the recovery of property stolen in dacoities and thefts or suspicious property found in possession of the accused
- (viii) Evidence of the simultaneous absence from their homes in batches or singly of known members of the gang coincident with the occurrence of dacoities and thefts in the neighbourhood
- (ix) Evidence of any increase or decrease in the number of dacoities or thefts coincident with the presence or absence of the members of the gang

(x) Evidence of the cessation of dacoities and thefts in the affected area after the arrest of the members

(xi) Evidence of the habitual commission of dacoities or thefts to be proved by an aggregate of acts

(xii) Evidence of changes of residence to avoid suspicion

(xiii) Proof of previous convictions for decoities and thefts (the former alone can be proved in a case under section 400, Indian Penal Code, but convictions under sections 379, 380 and 457, etc Indian Penal Code can be proved on a charge under section 400 or 401 Indian Penal Code, to establish the habits of individuals or the association of the members)

(xiv) Proof of orders under section 110 (a), (b), (c) Criminal Procedure Code, requiring any of the accused persons to give security for his good behaviour to prove that the person is a habitual thief (vide unreported case of Emperor versus Meher Ali Sarkar and other decided on the 20th March 1901 by Prinsep and Hill J J)

(xv) Proof of orders for security for good behaviour, when two or more of the accused have been bound over in one proceeding under section 100 (a), (b) (c) Criminal Procedure Code, as evidence of association (Vide section 117 (4) Criminal Procedure Code)

(xvi) Documentary evidence in the shape of relevant entries in enquiry slips in the surveillance register the Village Crime Note Book and other registers which are required by order of the Inspector General of Police to be maintained at a police station This evidence would probably be admissible under section 35 of the Evidence Act, but, if not might be used under section 159 of that Act to refresh memory

(l) Much evidence which is not ordinarily admissible in criminal cases is admissible in cases under section 400 and 401 Indian Penal Code as the persons accused in these cases are in fact members of a conspiracy and so section 10 of the Evidence Act will apply Previous convictions of dacoity are admissible in a case under section 400 and of thefts under section 401 Indian Penal Code under explanation 2 Section 14 of the Evidence Act (Emperor versus Nava Kumar Patnaik 1 C W N page 146) and according to many authorities of bad character under Section 54 is relevant in cases under sections 400 401 and 112 Indian Penal Code (Mayne's Criminal Law of India 3rd edition page 1016) Much of the evidence enumerated under the different heads above will be admissible under section 11 of the Evidence Act

10 (1) The effect of section 196 A of the Code of Criminal Procedure is to divide criminal conspirators into three classes

(i) Conspiracies for the commission of cognizable offences punishable with death transportation or rigorous imprisonment for a term of 2 years or upwards

In such cases the section imposes no new antecedent conditions prior to the institution of a prosecution

(ii) Conspiracies for the commission :—

(a) of any non cognizable offence, or

(b) of a cognizable offence not punishable with death, transportation or rigorous imprisonment for a term of 2 years or upwards

Under Local Government Order No 1211 P—D, dated the 24th May 1913 the initiation of proceedings in such cases can be undertaken with the written consent of the District Magistrate or of the Chief Presidency Magistrate for the town of Calcutta

(iii) Conspiracies for the commission—

(a) of an illegal act other than an offence, or

(b) of a legal act by illegal means, or

(c) of an offence to which the provisions of section 196 of the Code of Criminal Procedure apply

The section lays down that prosecution in such cases can be instituted only with the prior sanction of the Governor-General in Council, the local Government, or some officer empowered by the Governor-General in Council on this behalf The intention is that this authority will only be given when conspiracies of this nature seriously endanger the public peace and tranquillity, i e when it is to the manifest interest of the State and of society that conspiracies of this kind should be suppressed Irrespective therefore, of individual wrong, the law should only be put in motion when disturbance and injury of a grave and widespread nature are apprehended.

(2) Government wish to emphasize the desirability of resorting to prosecution of the offence of criminal conspiracy with due care, and only when the authorities are satisfied, after taking the necessary legal advice, that there are reasonable grounds for instituting proceedings Where the assistance of the Police is invoked in such cases, Police officers will be guided by the principles followed in the institution and conduct of gang cases The police officer employed for the purposes of supervision and local control must be of known integrity and experience and should go into the witness-box at an early stage of the case to show how the evidence has been got together and sifted The Deputy Inspector-General, Intelligence Branch, shall immediately assume control of all cases in which prosecution has been sanctioned by Government and in cases in which the District Magistrate has sanctioned the initiation of proceedings under paragraphs I-III, and has invoked the assistance of the police The nature of the control to the exercised is laid down in rule 553 The Deputy Inspector General, Intelligence Branch, will be responsible for keeping Government and the Inspector General informed of all important stages of the case and the Superintendent of Police of the District in which the proceedings have been instituted will be responsible for keeping the Commissioner and the District Magistrate similarly informed

In cases in which prosecution can be undertaken only by the order of the Local Government, the Deputy Inspector General Intelligence Branch, will take the advice of the Legal Remembrancer with regard to any proposal to institute a case for conspiracy before the preliminary enquiry commences, and from time to time as the case proceeds Steps will also be taken to secure such a course advisable Should a prosecution be sanctioned the selection of pleaders or counsel to conduct the case will be made with the approval of Government

(3) The procedure laid down in the preceding rule for obtaining the previous sanction of the Deputy Inspector General Criminal Investigation Department to the institution of a gang case shall apply *mutatis mutandis* to cases of conspiracy to commit the following classes of series of crimes —

(i) Counterfeiting Queen s or King s Coin Section 232 Indian Penal Code.

(ii) Murder (for gain) Section 302 Indian Penal Code

(iii) Mail robbery and professional highway robbery—Section 393, Indian Penal Code

(iv) Dacoity Section 395 Indian Penal Code

(v) Cheating cases in which professional swindlers are concerned—Section 419/420 Indian Penal Code

(vi) Counterfeiting currency notes and bank notes—Section 489A, Indian Penal Code

These cases shall as soon as instituted be specially reported to the Deputy Inspector General Criminal Investigation Department (vide Appendix XI) who may either assume control thereof or otherwise render assistance to the district police concerned In cases of conspiracy to commit a series of dacoities or robberies it must be remembered that section 400 or 401 Indian Penal Code involves respectively the offences of conspiracy to commit dacoities and robberies or thefts

11 In dacoities where the scene of occurrence is within reasonable distance of the line of rail the sub inspector assistant subinspector or constable to whom the report is made at the station will ascertain and note in the general diary whether information was conveyed through the station master to the nearest railway police

12 (a) Hue and cry notices in P R B Form No 59 shall be issued *in the following classes of cases when the accused are not arrested in the act*, and consequently the immediate dissemination of intelligence and the co operation of the staff of neighbouring railway river and district police stations is desirable —

(i) professional drugging cases

(ii) dacoits and all organised crime in which wandering gangs foreigners or residents of other jurisdictions are known or suspected to have been concerned,

(iii) escape of prisoners from jails or station lock ups, when they are not immediately arrested,

(iv) cases of cheating or swindling by professional criminals,

(v) when wandering gangs shake off police supervision, and

(vi) important cases in which the accused have absconded after committing the offence or in which identifiable property of large value has been stolen

(b) Except in those places where it is impossible to make use of the telegraph owing to the distance of the telegraph office, the details contained in hue-and cry notices should invariably be communicated by 'special police' telegrams worded as concisely as possible, and the hue and cry notice in P R B Form No 30 with fuller details, should be immediately despatched by post

(c) Such special police' telegrams should be sent, as far as possible in code language and for this purpose the Telegraphic Code used by the United Provinces Police which has been issued to all police stations, should be used

13 (a) Superintendents shall draw up lists showing the district railway and river police stations to which each police station officer shall issue hue and cry notices, and shall note on the lists the distance of each place from the nearest telegraph office These lists shall be prepared with careful regard to the lines of communication along which criminals are known to move When notice are sent to the Commissioner of Police Calcutta 40 copies shall be despatched so that they may be distributed at once among all the Calcutta Police Stations

(b) Railway and River Police Superintendents shall similarly prepare lists showing the district police stations to which their police station officers shall communicate such occurrences

(c) These lists shall be supplied to police stations concerned

(d) A copy of the list shall be supplied to each Dafadar as being the places where special police telegrams should be sent by him in the event of a dacoity or other serious occurrence in his circle

14 The notice shall be drawn up by the officer in charge of the police station who draws up the first information report of the case, one copy being sent to the Superintendent of Police along with the first information of the case by the quickest available means The Superintendent of Police shall at the same time be informed of the officer to whom the hue and-cry notice has been sent direct The officers in charge shall use his discretion as to the officers to whom the hue and cry notice should be sent Ordinarily one copy shall be sent to the officer in charge of each neighbouring police station including railway and river police stations if the occurrence took place near the railway or main river Notice shall also be sent to the

district to which the criminals are believed to have gone or in which they are believed to reside or to have associates.

15. If the first information of any of the cases mentioned in rule 206 (b) does not afford such material as will give any clue to the absconders or to the property stolen, the issue of the hue-and-cry notices should be deferred till further information is available.

16. The Superintendent of Police, on receipt of a hue and cry notice, may send copies to Superintendents of Police of Railways and Rivers or to any other officer to whom it has not been sent direct, if he considers it desirable.

17. On receipt of a hue and cry notice the officers in charge of a police station shall at once enter it in red ink in the register of letters received and in the general diary and shall take all necessary action. He shall in all cases communicate the contents to his subordinates and to all Dafadars and Chaukidars of his jurisdiction either by special messengers as far as possible or at muster parades and shall warn them to be on the lookout for the offender or stolen property as the case may be. All action taken shall be clearly noted on each notice which shall be consecutively numbered and filed. Successful detection of culprits or tracing of stolen property should be always rewarded.

18. (a) Superintendents shall prepare lists of unions bordering the railway line to which a railway station at which there is a telegraph office, is more accessible than the district police station. The Dafadars of these unions shall be furnished with forms of hue-and-cry notices and on the occurrence of any one of the cases noted above they shall at once fill up two of the forms and send one copy to the police station and the other copy (which shall be abbreviated if necessary) to the railway station to be telegraphed to the nearest Railway Police Station.

(b) Dafadars of unions in which railway stations are situated may, at the discretion of the Superintendent of Police be furnished with service stamps to enable them to pay for the transmission of telegrams sent in accordance with the orders contained in the preceding paragraph.

19. (a) When a Magistrate directs the police to enquire into the complaint of a cognizable offence of which no previous information has been laid before the police the written information sent by the Magistrate to the police shall be treated as the first information.

(b) When such a complaint is referred for enquiry upon some specific point or points the police shall submit an ordinary report not in the prescribed form.

(c) When it is necessary to employ the police to enquire into a non-cognizable case the Magistrate shall mention the section under which the complaint seems to fall and shall indicate clearly the particular point or points into which enquiry is needed.

(d) In every case referred to the Police for enquiry, a date shall be

fixed by the Magistrate by which the report or an explanation of the cause of delay shall reach him

20 The general diary is the book prescribed under section 155 Criminal Procedure Code, 1898, for the entry of all information received in respect of non cognizable offences

21 A register shall be kept in P R B From No 40 in which shall be entered all cases enquired into by the Police in which no first information report is required, e g cases under municipal or railway bye-laws section 43 Act V of 1861, cases under sections 107, 109, 110, 144, and 145 of the Criminal Procedure Code, non cognizable cases under the Criminal Tribes Act cases under sections 176, 182, or 211 Indian Penal Code, the Motor Vehicles Act, Goonda Act, Serais Act etc etc

Reports to the Court for trial in such cases excepting those under sections 107 and 145 Criminal Procedure Code, shall be submitted in P R B From No 41 Care shall be taken to see that column 6 is filled up in due course If after a reasonable period no final memorandum containing the Magistrate's order has been received, a reminder shall be sent to the court police office

22 The general responsibility for all investigation within the limits of jurisdiction will rest with the senior Sub Inspector of the police station

23 When information of an offence committed within "railway limits" is given at a district police station officer in charge of that police station shall record the information on plain paper and send it by the quickest route to the officer in charge of railway police station concerned, in order that the case may be registered and investigated by the railway police Should immediate action meanwhile be necessary, the district police shall take such action as they legally may

Similar action shall be taken by the railway police when information is lodged with them of an offence committed outside railway limits.

24 (1) These rules shall apply to the river police and all district police stations the jurisdiction of which is contiguous to the river police district as notified in Government of India Home Department, Notification No. 563 dated the 28th March 1912,

(2) (a) The river police have no power of investigation When a complaint of a cognizable crime is lodged at a river police station the officer in charge shall note this substance of the complaint in his general diary and direct the complainant to lodge information at the nearest district police station

(b) If the complaint is of a heinous offence and immediate apprehension of the accused is called for, the officer in charge of the river police station after noticing the facts in his general diary and sending intimation to the district police thana by the quickest means available, shall proceed at once to the place of occurrence and make all necessary arrangements for the

apprehension of the accused and the safe guarding of articles connected with the occurrence, pending the arrival of the district police

(2) When a report of a heinous crime is made at a river police station in the vicinity of a telegraph office, the officer in charge shall despatch a telegram reporting the occurrence to the District Magistrate and the Superintendent of Police having jurisdiction, in addition to informing the officer in charge of the district police station having jurisdiction, provided that if the river police station and the district police station are situated in the same place as at Goalundo the duty of informing the Magistrate and the Superintendent of Police by wire shall devolve on the district police

(3) On the report at a district police station of a cognizable offence in which it is suspected that the offenders arrived at or left the scene of occurrence by boat, the officer in charge shall send immediate information by the quickest available means to all river police stations through the jurisdiction of which the offenders can possibly pass or have passed The officer in charge of the river police station shall note the substance of the report in his general diary and take prompt action to assist in the apprehension of the offenders The river police shall, whenever possible, accede to any reasonable request of the district police to despatch their patrols in any particular direction with a view to apprehending escaping offenders

(4) In all cases of crime committed on rivers officers of the river police shall render all the assistance reasonably asked for by the district police in the course of their investigation

(5) Village chaukidars shall be instructed that it is their duty to render assistance to all ranks of the river police in the execution of their duty, when called upon to do so and similarly all ranks of the river police shall render assistance to chaukidars in effecting legal arrests or other matters included in their duty

(6) The river police have no power at present to search boats When they have reasonable grounds for suspecting that a boat contains stolen property arms and ammunitions unlicensed or excisable articles in excess of the quantity allowed by the law they shall take such steps as are necessary to keep the boat under observation, sending urgent information to the district police station having jurisdiction the officer in charge of which shall at once take necessary measures in accordance with the information given Should the river police become aware of the presence or passage of a boat known or believed to be carrying persons of suspicious character, they shall send intimation promptly to all police stations in the jurisdiction of which the boat is likely to halt or travel

(7) River police patrols when passing a district police station on or near the river bank must invariably call in with a view to excha information (This rule will of course not be observed when on im duty, which does not permit of delay).

(a) These visits should be noted in the general diary of the district police station and also in the diary of the patrol

(b) When the patrol is in charge of an illiterate head constable, the sub inspector in charge of the district police station shall initial the entry

(8) River police patrols shall call for exchange of information at all steamer ghats where district police constables are stationed.

(9) The following signals are ordered to be used by the district police and village police when they desire to call the assistance of a river police patrol, and on seeing them the patrol shall go in at once and render assistance

IN DAY TIME

At district police stations

'The hoisting of a red flag on a long bamboo'

Rural police

"A chaukidar's pagri tied to a bamboo and waved in the air and dropped several times to the ground"

AT NIGHT

Rural and district police

'Two men each waving two torches up and down"

(10) The river police shall attend all important melas and hats held on the river banks and assist the district police in keeping order at the landing places

(11) Inspectors and sub inspectors of the river police shall keep themselves in constant touch with the police officers of the district police stations bordering on their jurisdiction and shall pay them frequent visits with a view to exchanging information, ascertaining the state of crime, and discussing methods of controlling it

25 As a rule, no officer of lower rank than a sub inspector shall be employed in the investigation of criminal cases

26. Subject to the provisions of section 156, Criminal Procedure Code, no station officer may be deputed to undertake the duties of, or conduct a special enquiry in the jurisdiction of another police station, without the sanction of the Superintendent or circle-inspector

27 (1) Any officer in charge of police station may, under section 157 (b), Criminal Procedure Code, refrain altogether from investigating a case in which there appears to him to be insufficient ground for investigating

(2) Police officers shall observe the following broad principles in exercising the discretion vested in them by section 157 (b), Criminal Procedure Code —

I Every cognizable offence, other than one of those enumerated in clause II below, shall ordinarily be investigated if the informant

so desires If for any special reason no investigation is made, the special reason shall be recorded

II No investigation shall ordinarily be made in—

(a) Cases in which the injured person does not wish for an enquiry, unless the offence has occurred in a crime centre or appears to be really serious, or may reasonably be suspected to be the work of a professional or habitual offender or a member of a criminal tribe known to be addicted to crime, or unless it is otherwise desirable in the interests of the public that the case shall be investigated.

(b) cases which, after consideration of the information and of anything which the informant may have to say, appear to fall under section 95, Indian Penal Code, and

(c) cases in which the information shows the case to be of a purely civil nature, i e, where the informant is apparently seeking to take advantage of a petty or technical offence to bring into the criminal courts a matter which ought properly to be decided by the Civil courts

These instructions indicate only general principles and police officers shall exercise their discretion in every cognizable case that is reported to them

Note In the cases referred to in clause II (c) above the points to be considered are whether the complainant can obtain adequate redress from the courts by instituting a prosecution, and whether action on the part of the police is expedient for the preservation of order When the charge of enticing away a girl (section 363 Indian Penal Code and cognate sections) the police should be careful to ascertain that the case is not one of elopement or of a girl running away to her parents on account of ill treatment and in cases of cattle theft that it is not a mere dispute as to ownership or as to the payment of the price of an animal purchased

(3) In cases where investigation is refused the complainant or informant shall be informed in P R B Form No 42 (postcard form) of the fact and of the reasons for abstention

28 If the officer in charge of a police station decides that an investigation is necessary after despatching a first information report, he shall himself proceed to the spot or depute a subordinate to hold an enquiry who shall not be below the rank of assistant sub inspector In a case where the complaint is not of a serious nature and is made against a person known clause (a) of section 157, Criminal Procedure Code, does away with the legal necessity for a local investigation but it is very seldom that advantage should be taken of this section In rural areas, it is permissible only when a case of a simple nature is brou_

to the police complete, the complainant and witness being present. In towns the investigation may be conducted at the police station if it is close to the scene of crime

29 Investigating officer should carefully abstain from causing unnecessary harassment either to the parties or to the people generally Only those persons who are likely to assist the inquiry materially should be summoned to attend Where possible the investigating officer should himself go to the house of the witness to be examined The proceeding should be as informal as possible The questioning of witnesses should ordinarily be conducted apart, and in a manner that will not be distasteful to them

30 When an offence is reported the investigating officer shall consult all registers which are likely to assist him in his investigation particularly the Village Crime Note Book, before proceeding to investigate

31 Section 172 Criminal Procedure Code, prescribes the case diary which an investigating officer is bound by law to keep to his proceedings in connection with the investigation of each case The Section requires the diary to show

- (i) the time at which the information reached him,
- (ii) the time at which he began and closed his investigation
- (iii) the place or places visited by him,
- (iv) a statement of the circumstances ascertained through his investigation

Nothing which does not fall under one of the above heads need be entered but all assistance rendered by panchayats shall be noted When the information given by the panchayat is of a confidential nature his name shall not be entered in the case diary, but the investigating officer shall communicate his name and the information obtained from him in a separate report, and shall at the same time note briefly in the case diary that this has been done

Under heads (iii) and (iv) shall be noted the particulars of the house searches made with the names of witnesses in whose presence search was made (section 103 Criminal Procedure Code), by whom, at what hour and in what place arrests were made, in what place property was found and of what description, the facts ascertained, on what points further evidence is necessary, and what further steps are being taken with a view to complete the investigation

The diary shall mention every clue obtained even though at the time it seems unprofitable and every step taken by the investigating officer but it shall be as concise as possible The statements of witnesses shall not be recorded in the diary but the names of all witnesses examined shall be given The diary shall be a record of acts done by the officer and of the facts ascertained by him, i e, of the result of his investigation

32 (a) A diary so composed, that is a diary which does not contain

the statement of witnesses, is privileged The court may send for it and may use it not as evidence but as an aid in judicial enquiry or trial but the accused has no right to call for it or to see it, even if referred to by the court, the only exception is that when it has been used by the police officer who made it to refresh his memory or when the court uses it for the purpose of contradicting such officer, then the provisions of section 145 or section 161 of the Evidence Act, 1 of 1872, shall apply

(b) Only the following persons shall be allowed to see the case diaries —

(i) The investigating officer
(ii) The officer in charge of the police station
(iii) The circle inspector or police officers of higher rank
(iv) The court officer (sub inspector or inspector)
(v) Any person specially authorised by the above persons
(vi) The clerk or sub inspector in the office of Superintendent of Police authorised to deal with case diaries

(c) Each form shall have a separate printed number running consecutively throughout the book so that no two forms shall bear the same number On the conclusion of an investigation the sheets of the original diary shall be removed from the book and filed together Every file shall be docketed with the number month and year of the first information report the final form submitted and the name of the complainant the accused and the investigating police officer The orders regarding preservation and destruction of these papers shall also be noted All case diaries shall invariably be regarded as confidential and kept under lock and key in a secure box until the case to which they relate is finally disposed of by the orders of the Magistrate or the Judge, on an appeal if preferred, has been decided or the period allowed for appeal has expired No assistant sub inspector head constable constable or outsider shall be allowed to see the case diaries unless duly authorised

(d) Case diaries shall be written in English by those officers competent to do so Other officers shall write their diaries in the vernacular Statements recorded under section 161, Criminal Procedure Code shall however always be recorded in the vernacular except when recorded by European officers

33 (a) Case diaries shall be written up as the enquiry progresses and not at the end of each day The hour of each entry and the name of the place at which written shall be given in the column on the extreme left A note shall be made at the end of each diary of the place from the hour at and the means by which it is despatched The place where the investigating officer halts for the night shall also be mentioned

(b) A case diary shall be submitted in every case investigated The diary relating to two or more days shall never be written on one sheet or despatched together Two or more cases should never be reported in a

diary, a separate diary shall be submitted in each case daily until the enquiry is completed But it is not necessary to send one on any day on which the investigation, though pending is not proceeded with

(c) The diary shall be written in duplicate with carbon paper, and at the close of the day the carbon copy, along with copies of any statement which may have been recorded under section 161, Criminal Procedure Code and the lists of property recovered under section 103 or 165, Criminal Procedure Code, shall be sent to the circle inspector. In sub divisions where there is a Sub divisional Police Officer, another copy of the diary in special and misconduct report cases shall be made out by the carbon process and submitted to him This copy shall be preserved for one year

(d) In special report cases an extra carbon copy shall be prepared of the diaries, statements of witnesses recorded and lists of property recovered and sent direct to the Superintendent of Police and a further carbon copy to the Subdivisional Police Officer where there is one

(e) When sending charge sheet to the court officer, the investigating officer shall send all his original case diaries which shall be returned by the court officer on the case being finally disposed of

(f) All covers containing case diaries shall be addressed by name to the officer for whom they are intended and shall only be opened by those addressed

(g) If an officer who is supervising an enquiry into a case takes part in an investigation in the course of which any new or material fact comes to his notice he shall under section 172, Criminal Procedure Code, keep a case diary in accordance with the instruction given above. In most cases, however supervising officers take not active part in the investigation and in such cases it will be sufficient for them to keep a personal diary in the form prescribed for inspectors in which they shall set forth the manner in which they supervised any questions which they may have put to witnesses, any identification which took place in their presence, and any other material circumstances which may come to their notice and which will be useful to hem in refreshing their memories

34 (1) The law in regard to searches is contained in Chapter VII and sections 102 and 103, 165 and 166, Criminal Procedure Code These sections must be scrupulously followed The Officer conducing a search should take precautions to prevent the possibility, on the one hand, of any articles being introduced into the house without the knowledge of the inmates, and on the other, of any articles being taken out of the house while the search is in progress Search should be made in the presence of the owner or some one on his behalf The presence of search witnesses (vide clause 8 below) must not be looked upon merely as a formality, but they must actually be eye witnesses to the whole search and must be able to see clearly where each articles is found They should then sign the search list. If any search witness be illiterate, it should be read over to him and his left

thumb impression should be taken on it Where the witness do not know English, it should be written in the vernacular The suspected person whose property is seized, should, if present at the search also be asked to sign the list. Should he refuse, a note will be made to this effect and it should be certified to by the witnesses The suspected person or in his absence, the person in charge of the house or place searched should be given a copy of the search list He will be given an opportunity of comparing it with the original and be asked to sign an acknowledgment for the copy on the original list Should he refuse a note to that effect should be made and should be certified to by witnesses

(2) Only searches for any specific article which is known or reasonably suspected to be in any particular place or in the possession of any particular person can be made without warrants General searches without warrants are illegal and the only search which can be made without warrants is under section 165 There must be some specific thing necessary for purpose of investigation and there must be reasonable ground for believing that it is in a particular place and that duty in search is likely to interfere with the recovery of property The police officer must record in his diary (i) the ground of his belief and (ii) the thing he is looking for and must as soon as practicable send a copy of such record to the nearest Magistrate empowered to take cognizance of the offence (Section 165 (iii) Criminal Procedure Code) No place should be searched without a warrant merely because the occupier is a registered bad character or absconding offender Such a search should be made only under the circumstances given in section 165 Criminal Procedure Code and when the police officer has reason to believe that the thing searched for will be found in the place to be searched Provided that reasonable suspicion exists and a definite article (or articles) is (or are) searched for the police are entitled to search the house of an absconding offender, whether he has been proclaimed or not Police officers should note in their diaries the reasons for search though they are not obliged to give the name of the person upon whose information they act The name father's name and residence etc of any person producing keys of any locked receptacles or claiming ownership of articles seized should always be noted in the case diary

(3) Under section 165 (2) of the Criminal Procedure Code the officer in charge of the police station or the investigating officer who must not be below the rank of sub inspector must if practicable perform the actual search *in person* Only *when he is incapacitated from so doing can he* depute another officer to make the search and when he does so depute another officer he must first of all record his reasons for doing so and then give written orders to the officer deputed specifying what the search is for and where it is to be made A verbal order given on the spot will not fulfil the requirement of the section

(4) Before the commencement of the search the person of every

officer who is to conduct it, as also that of every witness and informer shall be examined before the witnesses and the owner of the house or his representative

(5) The law does not require a search under the Criminal Procedure Code to be made by daylight, except those under section 14 of Act I of 1878 (Opium) but there are advantages in searching by daylight, and a searching officer should consider whether a house search should proceed by night or whether daylight should be awaited Matters must be so arranged as to cause as little inconvenience as possible to the inmates, and especially the women

(6) When suspected property is found in a house all the property in the house is not to be seized Property seized must be either alleged or suspected to have been stolen or found under circumstances which create a suspicion of the commission of an offence, and nothing can justify the seizure of the whole of a man's property, because he is suspected of having stolen some particular article or articles

(7) The number of witnesses required to attend a house search depends on the circumstance of each particular case and no hard and fast rule can be laid down The witnesses selected should be residents of the same or adjoining villages If necessary such residents may be served with an order in writing to attend and witness the search

(8) Care should be taken that the witnesses are, so far as possible unconnected with any of the parties concerned or with the police, so that they may be regarded as quite independent Whenever possible the presence of the panchayat or headman of the village shall be obtained to witness a search Under no circumstances should a spy or habitual drunkard or any one of doubtful character be called as a search witness Reasons for rejecting any person as a witness to the search should be noted in the case diary

(9) Whenever it becomes necessary for a search to be made for arms illegally possessed a warrant must invariably be obtained under section 25 of the Indian Arms Act (XI of 1878) from a Magistrate. Such searches can only be conducted by, or in the presence of an officer of, or above the rank of sub inspector No police officer is authorised of his own motion to make a search for arms illegally possessed (vide section 30 of the Act)

(10) In order to satisfy the court as to the identity of articles alleged to have been discovered at a house-search and to prevent irregularities the officer conducting a search under sections 103 and 165, Criminal Procedure Code shall prepare a list in triplicate in P R B Form No. 41 of the property of which he has taken possession and shall forward it to the court officer by the first available dak after the search together with a report regarding search One copy of this list will be sent to the court officer together with copies of the records prescribed under section 165(5) One copy of the list only shall be given to the house holder or

his representative and the third copy will remain with the investigating officer On receipt in the court office, this list shall be stamped with the date of receipt and the record put up before the Magistrate Investigating officers are required to note carefully the instructions contained in the headings of the form and are enjoined to conduct searches under such conditions that there may be no room for suspicion on the part of the witnesses that articles have been surreptitiously introduced by them or their constables or chaukidars or any one whatever under their influence, with a view to their being included in the list of property actually discovered in the place under search Witnesses should be allowed free access to the place being searched and be given every facility to see and to hear everything that transpires

All articles or weapons found at a house search or on the person of a prisoner shall be carefully labelled and if a charge sheet is submitted in the case shall be sent to the court officer The labels shall be signed by the officer conducting the search

(11) If the warrant is issued in form No 8 or Schedule V of the Criminal Procedure Code, or if the search is made without a warrant or on a warrant issued under section 98 of the Criminal Procedure Code the police are not authorised to take away anything except the specified thing for which the search was directed or made but in all cases in which the Magistrate proceeds under paragraphs 3 and 4 clause 1 of section 96 of the Criminal Procedure Code and directs in his warrant that there should be a general search followed by a more careful inspection at the thana or some other convenient place papers and documents and other articles need not be examined and initialled piece by piece *in situ* They should be collected and packed in bundles These bundles or receptacles should be closed or locked as the case may be and must in all cases be sealed or marked by the search witnesses and entered in the lists For instance the contents of a desk drawer should be collected packed together and marked and initialled by the search witnesses For example it might be marked AA/Y Any other bundles packages papers or documents similarly packed up together might be sealed or marked AA/X AA/Z etc etc All the packages may be packed for easy carriage in a large receptacles which should in this case be marked A and should contain all the AA bundles or packages Subsequently these bulky boxes or packages should be very formally opened by the search witnesses who sealed or marked and signed them during the search and their contents should be gone over piece by piece examined kept or rejected but in every instance initialled and dated by the search witness and the police officers in question Each of these pieces must bear the initial letters and the serial of its original bundle plus its own serial number in that bundle Should any difficulty be experienced in getting a search witness to examine the documents at the police station it will be open to any police officer to call in the assistance of the court to co [illegible]

attendance of such search witnesses at the court to open the bundles, boxes etc Should he refuse to sign the contents of the bundles, the police officer should if possible invoke the help of an Honorary Magistrate or such other officers as may be available

35 A set of rules containing hints for the detection of counterfeit coin will be found in Appendix VII

36 Instructions for the guidance of police officers in sending documents for examination by the Government Examiner of Questioned Documents and requiring his attendance in law courts are laid down in Appendix VIII

37 A (a) Any weapons ammunition etc about which Superintendents may wish for an expert opinion shall be sent to the Deputy Inspector General Criminal Investigation Department Bengal, who shall arrange to have them examined by the trained expert attached to the Calcutta Police or other expert. Such expert examination is particularly valuable in the case of heinous offences in which firearms and ammunition are used For example an expert can sometimes detect the numbering on a weapon which an amateur is unable to discover

(b) Before sending exhibits for examination, Superintendents shall obtain permission in writing from the Magistrate dealing with the case This permission shall cover not only the examination of the articles but their being taken to pieces if necessary for the purpose of examination

(c) Before despatching exhibits for examination a careful note shall be made of the description and condition and of every mark by which they can be identified The articles shall then be carefully packed, sealed and despatched by special messenger or by registered parcel post One list of contents shall accompany each package

37 B When the opinion or evidence of handwriting expert is considered necessary by any judicial officer in a criminal case a report should be sent by or through the District Magistrate to the Deputy Inspector General of Police Criminal Investigation Department Bengal If the service of the expert attached to the Criminal Investigation Department is available or can be made available within a reasonable time the Deputy Inspector General will arrange for that officer to do the preliminary work give an opinion and if necessary give evidence in court Otherwise the Deputy Inspector General will report the matter to Government in the Police Department for orders as to whether a private expert should be engaged The fees charged by such an expert for appearing before a Court as a witness are debitable to the allotment for Diet and Travelling Allowance of witnesses of the officer at whose instance the request is made or to his allotment for Other non-contract contingencies if the fees are paid for obtaining his opinion In making their report to the Deputy Inspector General of Police District Officers should mention the state of their allotments under these heads

38. The following are the rules for the treatment and handling of suspected bombs —

The local police officer should communicate at once with the Superintendent of Police who will himself proceed or depute some responsible officer to proceed to the place to carry out the following instructions —

(1) If you have any reason however slight, to believe that the suspected bomb is dangerous then regard it as being Highly Explosive until it is proved to be otherwise

(2) Bombs may be met with in the following forms —

(a) Military grenades
(b) Copies of military grenades
(c) Bombs made of tins, soda bottles, chatties, cocoanut shells, jute or hemp, bamboo tubes, etc
(d) Pook bombs
(e) Letter bombs

(3) Before touching the bomb examine it where it lies and see if you can detect the arrangement for firing Should there be a trigger, see if it is set or not Do not move the bomb unless you are satisfied that it is safe to do so If you are not satisfied, then place a guard over the bomb and report to your senior officer

(4) *a*) **Military grenades** The first thing to do is to see that the safety pin is in position that it is not broken or corroded and that the ends are well splayed out so that it cannot be jolted out See that the jaws of the lever are in good condition and support the striker correctly Being satisfied on these points the base should be unscrewed and if the igniter set is present it should be carefully removed Pack the igniter set and the bomb in cotton wool in separate wooden boxes The bomb is then safe to be transported by hand If the safety pin and lever are missing or the striker is inside the bomb it will probably have to be destroyed *in situ*

(*b*) **Copies of military grenades** These generally resemble military grenades but are of cruder finish It is usually possible to render them harmless by removing an explosive cap or tuft or gun cotton This should only be done when you are satisfied that the trigger is safe Do not put this type of bomb in water but provided the trigger has been made inactive, it should be packed in cotton wool in a wooden box and it will then be safe for transport by hand

(*c*) **Bombs made of tins bottles, jute etc** A string bag should be hung over a large bucket of water by means of a strong cord passed over a beam or branch of a tree etc This should be arranged in a yard or garden or other open space from which the public are or can be excluded Early in the morning carefully remove the bomb, keeping it in the same position as found and place it in the bag From a sheltered position, first having sent everybody present under cover, lower the bomb into the water and leave it there until the evening when the cord may be carefully detached

from the string bag and the bucket containing the bomb be locked up for the night

Early next morning replace the bucket and bomb in the original position carefully reattach the cord to the string bag and from the sheltered position hoist the bomb out of the bucket Leaving the bomb suspended in the air remove the bucket and from the sheltered position, first having sent everybody present under cover, very greatly bump the bomb on the ground until it is turned over inside the string bag Then replace the bucket and lower the bomb into it once mere

In the evening the cord may be carefully detached feom the string bag and the bucket containing the bomb be locked up for the night

Next morning replace the bucket and bomb in the original position reattach the cord to the string bag and hoist the bomb out of the bucket Now carefully examine the bomb as it lies in the string bag and if the water does not appear to have penetrated inside lower it into the bucket again and after locking up the bucket and bomb report to your senior officer and await instructions If, however the bomb appears to be throughly wet then remove the bucket and from the sheltered position first having sent everybody present under cover, violently bounce the bomb twenty time on the hard ground Leave the bomb alone for two hours If it is now packed with straw in a small bucket containing water it should be safe to transport by hand Water should be added to the bucket when necceseary

(*d*) **Book bombs.** These are bombs made up in book form and are generally designed to explode when the book is opened or turned over Such a bomb should be very carefully taken to an isolated place and locked up Special care should be taken to keep it in the original position whilst being moved Send a report on the subject to the chief Inspector of Explosives

(*e*) **Letter bombs** These are letters containing explosives which are designed to explode when opened Place the whole letter in a bucket of water When the letter is quite wet, pack it in a tin in wet cotton wool, it will then be safe for transport by hand

> Note Fuller instructions are given in 'Instructions for dealing with substances or objects suspected of being explosives," which have been separately issued to all superintendents

39 (1) When a report is made by the master of an inland steam vessel under section 32 of the Inland steam vessels Act 1917, to the officer in charge of a police station—

(*a*) such officer shall reduce the report to writing and shall at the same time record the statement of the injured party (if any) if available,

(*b*) if the place of occurrence be within the local limits of any other police station, such officer shall forthwith inform the officer in charge of that police station,

(c) a copy of the report and of the statement (if any) shall forthwith be submitted to the Magistrate in charge of criminal work at district headquarters or if the place of occurrence be in a subdivision to the Subdivisional Magistrate provided that in cases of casualties occurring within the limits of the port of Chittagong such report shall be submitted to the Port officer, Chittagong

(d) pending the orders of the Magistrate referred to above no arrest shall be made by the police under Chapter XIV of the Code of Criminal Procedure 1898 with a view to a prosecution for an offence under section 280 of the Indian Penal Code (Act XLV of 1860) but witnesses may be examined and their names and addresses recorded so that it may be possible to procure their attendance if it is decided to prosecute ,

(e) if the Magistrate above referred to is of opinion that an investigation under section 33 of the Inland Steam vessels Act 1917, is necessary, he shall submit a report of the case to Government ,

(f) if he considers that no such investigation is required and that the facts of the case disclose the commission of an offence punishable under section 280 of the Indian Penal Code, he may direct the officer in charge of the police station concerned to take cognizance of the offence

(2) If the officer in charge of a police station receives information relating to the commission of an offence under section 280 of the Indian Penal Code by the master of an Inland Steam vessel he shall adhere to the following rules namely —

(a) if he has reason to believe, either on information received under clause (b) or on other grounds that a report has been made by the master of the inland steam vessel concerned to the officer in charge of some other police station under section 32 of the Inland Steam Vessels Act, 1917,—

(i) he shall reduce the information to writing and shall take steps to secure the names and addresses of witnesses and to safeguard any property produced ,

(ii) he shall also submit a copy of the information forthwith to the Magistrate described in clause 1 (c) ,

(iii) pending the orders of the above Magistrate he shall not make any arrest under chapter XIV of the Code of Criminal Procedure, 1898, with a view to a prosecution for an offence under section 280 of the Indian Penal Code ,

(b) if he has not reason to believe that such a report has been made he shall proceed to investigate the case under Chapter XIV of the Code of Criminal Procedure, 1898, (Bengal Gov.

Notifications No 1792 J, dated the 10th June 1912 and No 3133 J dated the 14th July 1913)

40 Under Section 3 of the Inland Steam-Vessels Act 1917, read with section 73 an inland steam or motor vessel shall not proceed on any voyage or be used for any service unless she has certificate of survey in force and applicable to such voyage or service Sections 55 and 58 also provide that plying without a certificate of survey and carrying passengers in excess of the number set forth in the certificate of survey are offences punishable under the Act It is therefore one of the duties of Police officers not below the rank of sub inspector to see—

(1) that each vessel has a certificate of survey in force,

(2) that the number of passengers carried is not in excess of that stated on the certificate, and

(3) that accommodation other than that mentioned in the certificate is not used by the passengers

Superintendents of Police shall report to the District Magistrates all cases of infringement of the Act

Note —The operation of section 3 of the Act is subject to the order contained in the Government of Bengal Marine Department, Notification No 78 Mine, dated the 17th August 1917, which lays down that the provisions of Chapter II of the Act which relate to survey of inland steam vessels shall not apply to inland steam vessels which do not ply for passenger traffic or which though plying for hire for passenger traffic are not capable of carrying more than 12 passengers (Government Order No 600 Pl dated the 27th January 1927)

41 Records of a post office shall be produced and information available in them shall be given by the postmaster on the written order of any police officer who is making an investigation under the Criminal Procedure Code, but only those entries in the records shall be disclosed which relate to the persons accused of the offence under investigation, or which are relevant to that offence In any other case the postmaster shall refer for orders to the Postmaster General who will decide whether or not under section 124 of the Indian Evidence Act I of 1872 the information required shall be withheld When the information required by a police officer is not available in the records of the post office the Police officer shall be informed accordingly, irrespective of the question whether the information if available, might or might not be given

42 When expert opinion is required in the investigation of a case on the following matters the action noted below them shall be taken —

(1) Forged notes, documents or signatures

(2) Firearms and used or unused ammunition

(3) Foot-prints

(4) Hair

(5) Textiles and Fibres

Assistant to the Deputy Inspector General Criminal Investigation Department, shall be addressed, who will arrange for having the examination performed by experts available In the case of foot prints the requisition shall be made by telegram and if the foot print is in sand this fact shall be stated

(6) Counterfeit coins

The coins shall be sent to the Mint Master for assay

(7) Materials for counterfeiting coin and chemicals of all kinds

The substance shall be sent to the Chemical Examiner to the Government of Bengal

43 The services of the Photographic and Criminal Intelligence Bureau (vide rules 537—551) shall be utilised as far as possible for the examination of finger marks left by criminals in the act of committing offences as also for obtaining information regarding particular classes of crime and criminal Every investigating officer shall carefully study and observe the rules on the subject contained in Chapter XVI

44 If a person whose evidence is required is in imminent danger of death, his statement shall be recorded by a Magistrate whenever possible When this cannot be managed and it becomes necessary for some other person to record a dying declaration this shall be done whenever possible, in the presence of the accused or of attesting witnesses A dying declaration made to a police officer shall be signed by the person making it, under the provisions of section 162, Criminal Procedure Code

45 Besides the diary an investigating officer has discretion under section 161 of the Criminal Procedure Code to record or not the statement of any witness examined by him All such statement shall be signed and dated by the officer recording them and, when taken in his presence by the superior officer locally supervising the case No such recorded statement shall be used for any purpose (except the following) at an inquiry into or trial of the case in which it was recorded When, however, the witness, whose statement has been so recorded is called for examination by the prosecution, the accused is under section 162 of the Code, entitled to request the court to refer to the statement and the court is bound to do so The court shall also direct the accused to be furnished with a copy thereof in order that any part of such a statement if duly proved may be used to contradict such witness as provided in section 145 of the Indian Evidence Act Only if the court considers that any portion is irrelevant or that its disclosure is not essential to the interests of justice and is inexpedient in the public interests it shall exclude such part from the copy of the statements furnished to the accused The statements of important witnesses should be recorded under section 161 in all heinous cases, but not ordinarily in other cases It is, however, open to the investigating officer to record the statement of a witness who he thinks is not speaking the truth or is likely subsequently to alter his statement A dying declaration should

separately reported, so that the court officer may bring it to the notice of the Magistrate and the Jailor.

51. As soon as possible after the charge has been substantiated, the charge-sheet shall be sent by the quickest means to the court officer for submission to the Magistrate When a *prima facie* case is made out in a case in which articles have been sent for chemical analysis, the charge sheet shall not be delayed till receipt of the Chemical Examiner s report If a case in the first instance is reported in final report form, but subsequently by the Magistrate's order otherwise the accused person is placed on his trial, the final report form shall be cancelled and a charge sheet submitted If, on transit from a police station to the court an accused person absconds the charge sheet form shall stand The case shall be kept pending till the absconder is arrested or till his arrest is considered hopeless

52 Lists of property stolen lists of property found on parties arrested reports on previous convictions the bail and recognizance bonds executed under section 170 Criminal Procedure Code (Forms XXV and XXVI of Schedule V Criminal Procedure Code) and a map in cases in which the rules require a map shall be attached to the charge-sheet form

53 Simultaneously with the submission of the charge-sheet and its annexures (see above) the investigating officer shall prepare three copies of a brief containing full particulars of the case and of evidence available for sending up the accused person, in P R B Form No 47 (The brief shall be kept apart and shall not form part of the case diary during the pendency of the case) One copy of the brief shall be sent to the court officer, one to the circle inspector and one to the Superintendent, so as to reach them, if possible at least seven days before the date fixed for trial Should the Superintendent or circle inspector notice defects in the investigation, he shall at once draw the attention of the investigating officer to them so that further investigation may be undertaken if necessary and he shall send to the court officer a copy of any orders he issues

Any suggestion the Superintendent or inspector has to make regarding the conduct of the prosecution shall be communicated by him to the prosecuting officer who shall take the necessary action for making the presentation of the case complete He shall not wait, however, for such suggestions before remedying defects which become apparent to him

The Superintendent should note whether there are absconders or not from column 9 of the brief, and pass orders for registration of such absconders immediately

54 In gang cases a statement shall be prepared showing in chronological order and under the different heads of proof the criminality of the persons concerned It shall be sent to the court officer at the same time as the brief

✓ 55 (a) Section 61, read with section 167 of the Criminal Procedure Code

requires that an accused shall be sent forthwith to the nearest Magistrate, together with a copy of the entries, in the case diary, if the enquiry be not completed within 24 hours of his arrest, but in no case shall the accused remain in police custody longer than what under circumstances of the case is reasonable.

(b) The High Court have issued the following orders regarding remands:—

The attention of all Magistrates is invited to the provisions of section 167 of the Code of Criminal Procedure and to the importance of exercising a sound judicial discretion in the matter of granting or refusing remands thereunder.

Orders under this section, it is to be observed, should be made in the presence of the prisoner and after hearing any objection he may have to make to the proposed order.

When further detention is considered necessary, the remand should be for the shortest possible period.

Application for remands to police custody should be carefully scrutinised and in general should be granted only when it is shown that the presence of the accused with the police is necessary for the identification of persons, discovery or identification of property, or the like special reason.

In particular the court is of opinion that applications, if ever made for the remand to police custody of a prisoner who has failed to make an expected confession or statement should not be granted.

(c) When the conditions justifying a remand to police custody exist the station officer shall forward the accused to nearest Magistrate (whether or not he has jurisdiction to try the case), together with a copy of his case diary and report the matter to the Superintendent of Police.

(d) The grounds upon which the remand is needed shall be distinctly stated in the application to the Magistrate.

(e) An application for a remand to police custody shall not be treated as a matter of routine and of little importance. The application shall therefore be made personally by the chief police officer present to the chief magisterial officer present. Thus at a headquarters station the Superintendent of Police, and at a subdivision, the circle inspector (if there be no Assistant or Deputy Superintendent) shall appear before the Magistrate of the district or the Subdivisional officer, as the case may be, to make the application, unless it is impossible owing to the absence or one of the officers concerned or some other exceptional cause.

(f) No order remanding an accused person to police custody shall be passed by an officer of lower status than an Magistrate of the 2nd class and applications for remands shall be made to Magistrate of the required status only.

(g) The exercise of the power to remand a prisoner to police custody shall be restricted to stipendiary Magistrates of the required status and in

their absence the Honorary Magistrates of the 1st class with single sitting powers

(h) When the object of the remand is the verification of the prisoner's statement he should be remanded to the charge of a Magistrate

(i) The period of remand shall be as short as possible

56 (a (1) If an accused or suspected person volunteers a confession, a police officer will make use of it as he should of every valuable clue obtained But all officers are warned first against working with the object of obtaining a confession and secondly against relying unduly on confessions or admissions to prove cases in court

(2) Anything which savours of oppression or trickery in obtaining a confession must be avoided The aim of a police officer should be to obtain circumstantial and oral evidence so convincing that the accused person cannot escape If he succeeds in obtaining such evidence, the confession will often follow and will materially strengthen the case, but to seek to obtain the confession first and the corroborative evidence afterwards is to reverse the proper order of proceedings If however a confession is volunteered in an inquiry, every effort must be made to ascertain if there is evidence corroborative of any point in the confession which can be verified A statement purporting to be a confession will often be made in order to mislead the inquiring officer and such statements are very rarely true in all particulars and also are frequently made in order to throw blame on other persons or with a view to deter from further inquiry Also they are generally retracted in court, in which case if they stand alone and uncorroborated, they have little or no probative value There is thus every reason for testing so called confessions very carefully and not accepting them as final and conclusive and stopping the inquiry

(b) Every confession which a person in police custody wishes to make should be recorded by the highest Magistrate short of the District Magistrate who can be reached in a reasonable time Confessions can only be recorded by Presidency Magistrates, Magistrates of the first class and Magistrates of the second class specially empowered by the local Government Investigating Police Officers should not be allowed to be present when a confession is recorded The Magistrate should satisfy in every reasonable way that the confession is made voluntarily It should be made clear to the prisoner that the making of a statement or not is within his discretion Cognizance of complaints of ill treatment by the police should be promptly taken and any indication of the uses of improper pressure should be at once investigated Confessions should ordinarily be recorded in open court and during court hours, provided that if the Magistrate is satisfied, for reasons to be recorded in writing on the form of confession, that the recording of the confession in open court would be liable to defeat the ends of justice the confession may be recorded elsewhere. The immediate examination of an accused person directly the

police bring him into court should be depreciated, and, when feasible, a few hours for reflection in circumstances in which he cannot be influenced by the police should be given him before his statement is recorded

(c) In nearly all gang and other important cases, the evidence of an approver is necessary to prove the organisation and doings of the gang If an accused person confesses and names his accomplices, it is the duty of the investigating officer at once to produce him before a Magistrate with a view to having his confessions recorded, and then thoroughly to investigate the case in the absence of the accused person Magistrates shall not ordinarily be deputed to verify confessions In the first instance, all cases in which an accused has confessed should be thoroughly investigated by the police in the absence of the accused person, and it will only be if the police find that certain places cannot be discovered without the assistance of the confessing accused, that there will arise any question of taking the accused to the spot and having his statement verified by the Magistrate When such a contingency happens the investigating officer should report to the Superintendent of Police and the latter, if he considers the case of sufficient complexity and importance to justify this procedure being adopted will lay the fact before the District Magistrate with the request to have these portions of the confession verified locally When an application for verification under these circumstances is made, copy of the translation of the confession, together with details of the specific place or places which the police have found it impossible to identify in the absence of the accused must accompany the application

(d) The verification should be made with a view to discovering corroborative evidence of a circumstantial kind and should begin from the place immediately preceding the place which cannot be traced without taking the confessing accused to the spot and end with the discovery of that place and in the case of a single incident from the place where the gang assembled and started The principal incidents of the crime in connection with the spot sought to be discovered and its attendant events should be recorded in chronological order

(e) Should the person whom it is desired to use as an approver be undergoing a substantive sentence of imprisonment in jail at the time he gives his information it will be necessary in order to allow the verification to take place, to move the local Government to suspend his sentence temporarily under section 401 Criminal Procedure Code and as a condition of such suspension Government will require him to remain in charge of the subordinate Magistrate whom the District Magistrate may select for the purpose of verifying his confession

(f) The object of having a confession verified will be to trace th place of a crime of which the confessing accused is unable to gi sufficient description by which it can be independently traced. advantage of having this place pointed out before an impartial

consists in stamping the discovery with the presumption of truth and also in making available the evidence of the Magistrate as to how the place was discovered

(j) During the local verification of a confession the Magistrate deputed to verify it shall be responsible for the safe custody of the prisoner and shall have sole charge of him, but the latter shall on no account be put in a thana lock up No police officer of any rank shall have access to him except with the written permission of the verifying Magistrate and in his presence and a record shall be kept of all such interviews permitted Ordinarily such permission should not be given to any police officer directly connected with the investigation

The prisoner shall be guarded by peons arranged for by the verifying Magistrate when such arrangements are considered sufficient to prevent the escape of or any attack on the prisoner When the custody of peons is considered insufficient the verifying Magistrate should apply to District Magistrate for a guard from the armed police reserve, but the men of this guard shall be forbidden to hold any communication with the investigating police or to converse with the prisoner the personal wants of the prisoner being attended to by the Magistrate's peons under the eyes of the guard

57 The High Court has issued the following instructions for the guidance of Magistrates in recording confessions under section 164, Criminal Procedure Code —

The attention of all Magistrates is invited to the provisions of sections 24 to 28 of the Evidence Act and section 364 of the Code of Criminal Procedure

The court considers it desirable to indicate some of the safeguards which should be adopted against malpractices and the acceptance of the confessions improperly obtained

(1) Where at any place or station there are present more Magistrates than one confessions should in general be recorded by the Magistrate specially selected for this purpose by the District Magistrate, or failing such selection by the Magistrate senior in rank or class

(2) During the examination of the accused and the record of his statement unless in the opinion of the Magistrate the safe custody of the prisoner cannot otherwise be secured, police officers should not be present In particular the police officers concerned in the investigation of the case *or in the arrest or production of the accused should be excluded*

(3) When the accused is produced the Magistrate should ascertain when and where the alleged offence was committed and by questioning the accused should further ascertain when and where the accused was first placed under police observation, control or arrest

(4) The Magistrate should next question the accused in order to ascertain whether he is about to speak voluntarily It should be made clear to the prisoner that he is free to speak or to refrain from speaking

as he pleases, and he should be warned that if he chooses to speak, anything he says will be used in evidence against him

(5) When, upon questioning the prisoner and from observation of his demeanour the Magistrate has reason to believe that the prisoner is speaking or is about to speak voluntarily he shall then proceed to record his statement While carefully avoiding anything in the nature or cross-examination the Magistrate shall endeavour to record his statement in the fullest detail and to this end may properly put such questions, not being leading questions as may be necessary to enable the prisoner to state all that he desires to state and to enable the Magistrate clearly to understand his meaning

58 If the prisoner has been confined in jail in default of finding security, the local Government may not suspend his sentence, as he has not been imprisoned for an offence within the meaning of section 401, Criminal Procedure Code In such cases he may be released on bail if it is forthcoming or if not the District Magistrate may cancel the bond under section 125 Criminal Procedure Code In either case, on release, he should be re-arrested and charged with an offence under section 400 or 401, Indian Penal Code and made over to the Magistrate in order that his confession may be recorded (if this has not already been done) and verified if needed (under circumstances mentioned in clause (c) of rule 2[illegible]4 supra)

59 If it is desirable that a prisoner be removed from one jail to another for the purpose of verifying his confession, either of the following procedure may be followed —

(a) When the two prisons are in the same province application should be made to the Inspector General of prisons to direct his transfer under section 29 (2) of the Prisoners Act III of 1900 as amended by Act I of 190[illegible]

(b) When the two prisons are in territories under two different local Governments then in virtue of section [illegible] I of Act III of 1900, as amended by Act I of 19[illegible] the Inspector General of Prisons [illegible] move the Inspector General of Prisons of the other province to effect the transfer [illegible] Rule [illegible] Government of [illegible] Circular No [illegible]—[illegible] 8 of 8th August 19[illegible] rule 832, Bengal [illegible] should [illegible]

It will [illegible] proceedings are instituted against the confessing prisoner in the district [illegible] he is to be [illegible] an order is then applied for under [illegible] of Act III of 1[illegible] in the court having jurisdiction in the form [illegible] in the second schedule of the Act This procedure should be followed also in the case of all other prisoners who are accused in the [illegible] It may be observed that when removal is desired of a person confined in a prison more than [illegible] miles distant from the place where the court in which he is to be

(b) Hue and cry slips
(c) Verification rolls
(d Applications for certified copies of previous convictions

Correspondence in matters, relating to conviction rolls of accused persons and police enquiries regarding suspicious and bad characters should be addressed by Superintendents direct to the Superintendents of Police of the various districts of the Jaipur State in Rajputana and not to the Political Officer The Superintendents of Police of Jaipur will similarly address such correspondence direct to the Superintendent of Police concerned in this Presidency

Delays in receiving replies if of as exceptional nature, should be reported to the office of the Inspector General of Police Bengal

61 (a) A map or plan shall always accompany the charge sheet in cases of murder dacoity serious riot, mail robbery, highway robbery extensive burglary of theft where Rs 600 or more are stolen Ordinarily maps will not be required in cases other than those mentioned above, but the investigating officer may at the discretion prepare and send up a map in any other case The map shall be prepared at as early a stage of the investigation as possible

(b) The map shall if possible be drawn to scale, but this is not essential If not drawn to scale, the fact shall be noted clearly on the map

(c) The draughtsman or investigating officer who prepares the map shall bear in mind that it is essential for a correct appreciation of the situation by the court and jury that a clear distinction should be made between i) facts actually seen by the draughtsman himself and (ii facts deposed to only by witnesses Statements made by the draughtsman as to the first group are always relevant, his statements as to the second are *prima facie* inadmissible and cannot be used as primary evidence to go to the jury

It is necessary to maintain a suitable distinction in the map between these two sets of facts This distinction shall be effected as follows —

(1) The objects actually seen by the persons preparing the map including such permanent features as buildings, trees, roads paths and tangible points connected with the case, such as blood stains foot prints cloth and corpse etc actually seen by him shall be indicated by letters of the Alphabet A, B C D etc explanations of these letters being given preferably in the margin of the map, but if these cannot be conveniently done, the explanation shall be furnished on a separate sheet of paper attached to the map

(2 Particulars derived from witnesses e g, the place where witness X is said to have stood where the accused is said to have been standing

when seen by X, where the blow was struck etc shall be indicated on the map by the numbers 1, 2, 3, 4 etc The explanation of these numbers, however shall on no account be given on the face of the map or on the separate sheet of paper referred to above but on another sheet of paper distinct from either the map or the list of explanations of the actual facts indicated by letters

(d) The number of the case and the name of the accused shall be given at the top of the map and the signature of the person who prepared it at the foot Use should always be made of cadastral and other maps where they are available and are of sufficiently large scale

(e) The draughtsman or the investigating officer who prepared the map shall be produced as a witness at the trial

66 In riot cases all persons against whom the offence is proved shall be sent up The practice of sending up one or two persons only is forbidden Similarly, in proceedings under section 110, Criminal Procedure Code, care shall be taken that the principals and not only persons of minor importance are bound down

67 (a) Unless the District Magistrate otherwise directs, the witnesses shall be bound down to attend before the Magistrate as soon as they can reach his court except when the occurrence of a gazetted holiday renders it impossible that the case can be heard at once, in which case they shall be bound down to appear on the morning of the next day after the holiday or holidays If any delay is allowed for the convenience of the witnesses or for any other special reason, the circumstances shall be at once reported to the Magistrate

(b) To enable the court officer to prepare himself for the case in time for trial charge sheets shall be sent so as to reach him at least one clear day before the date fixed for trial The final diary shall contain a summary of the case and a synopsis of the evidence against the accused

68 It lies with the police subject to general instructions from the Magistrate to determine what evidence is necessary to establish a charge and what number of witnesses are required to prove each fact Much will of course depend on whether the fact is seriously disputed or not Where the fact to be proved is not likely to be disputed unnecessary witnesses should not be harassed by being sent in Under section 171 Criminal Procedure Code no witness or complainant can be required to accompany a police officer A witness refusing to execute a bond may be sent up in custody

69 (a) Bills for expenses of witnesses who are not Government servants for diet money and the cost of travelling by rail or long distances by boat or road in the interests of police investigation may be sent to the Superin

tendent for sanction and payment Such expenses should only be incurred in cases of considerable importance and should be recovered from the District Magistrate on the analogy of the rule framed under the provisions of sections 544 Criminal Procedure Code, regulating the payment on the part of Government of the expenses of complainant and witnesses attending the criminal courts

(b) The bill after being passed by the Superintendent of Police shall be paid from his permanent advance, and the amount made over to the witness concerned if he is present or sent to the Superintendent of Police of the district or to the officer in charge of the Police station, in which the witness resides, to be paid to the person entitled to the sum A receipt for the amount paid shall in all cases be taken from the actual payee The amount paid from the permanent advance shall be recoverd from the Magistrate.

(c) Superintendents, when passing these bills, shall see that police officers have not neglected their duty of themselves going to the scene of the crime and interrogating the witnesses there The true object of the rule is to provide for those important cases in connection with which the witnesses have to be brought from other districts to identify accused person or to describe on the spot the progress or events connected with the crime The bills should be passed and cashed with all possible promptitude

(d) All charges incurred by police escorts on account of travelling and diet expenses of witnesses arrested under warrants issued by criminal courts under section 92 of the Code of Criminal Procedure shall also be recovered from the courts

(e) All legitimate expenditure of investigation officers, as well as all necessary expenditure incurred in the investigation of cases which cannot under the existing rules be paid from other sources or recovered from the courts, shall be paid by the Superintendent from the contract contingent grant and shall be recorded under a detailed head "Police investigation charges"

NOTE Clause (e) of the rule covers expenses such as—

(i) travelling and diet expenses of witnesses attending police enquiries who are not required to appear before the court,

(ii) Subsistence allowance or travelling expenses of informers and approvers,

(iii) diet expenses of chaukidars and dafadars called in from distant beats to help in the investigation of cases, and

(iv) hire of conveyances for bringing important personages to the scene of occurrence to help in investigation

70 The travelling expenses of complainants and witnesses attending court in railway or district police cases are payable by the criminal court in accordance with *rules framed* under section 544, Criminal Procedure Code

71 (a) In all cases in which no arrest is made (except as in charge sheet cases) or in which there is insufficient evidence to send up the persons arrested for trial or in which the charge is reported false the final report contemplated in section 173 (1) of the Code of Criminal Procedure (Act V of 1898), shall be submitted in P R B Form No 49

(b) The final report shall be submitted through the circle inspector immediately on completion of the investigation and the actual date and hour of despatch shall be clearly entered on it

(c) Bail bonds taken under section 169 Criminal Procedure Code, shall be in form No XXV of Schedule V Criminal Procedure Code no specific date being fixed and shall be sent with the final report form

(d) In column 8 the investigating officer shall give a clear statement of the case and of the evidence pro and con together with the reasons for not sending the accused up for trial to enable the Magistrate or Judge whether his action has been correct and to decide how the case is to be entered in the statistical register

72 On completion of the investigation whether a charge sheet or final report is submitted the investigating officer shall under Criminal Procedure Code 173 (1) (b) communicate to the informant in P R B Form No 50 the action taken by him

73 (a When an investigating officer is of opinion that a case is maliciously false he shall not be content with the mere negative proof that complainant has failed to prove his case coupled perhaps with some inference based on circumstantial evidence that the case is false He shall proceed to collect positive evidence which will support a prosecution of the complainant under section 211 or 182 Indian Penal Code as the case may be He shall examine the witnesses and shall give in the case diaries and the final report form a complete list of the witnesses whose evidence will be needed to prove the case false He shall also record the reason for his opinion in the final report form with special care and fulness The court officer will then be in a position to deal with the case as required in Chapter XIII

(b) The result of the application for sanction to prosecute and of the trial if prosecution be sanctioned shall be communicated by the court officer to the officer in charge of the police station

(c) Prosecution against complainants in false cases shall be instituted only when the charges made are deliberately and maliciously false and not when they are merely exaggerated

(d) Section 250 Criminal Procedure Code which allows compensation up to Rs 50 to be given in all cases where frivolous and vexatious charges are made, should meet all the more venial cases

74 (a) When the Magistrate considers that the police have act erroneously in not sending up an accused person for trial and that

evidence supports the charge, he shall either order a fresh enquiry or direct the case to be sent up in charge sheet form for trial

(b) When fresh enquiry is ordered, it shall be entered on and completed as soon as possible. If, on the completion of such enquiry, the sub inspector considers the charge proved, he shall submit a charge sheet form if not, he shall submit a final report in the usual way

(c) When the Magistrate, after receiving either an original report or the report after further enquiry in which the investigating officer still finds no reason to send up the accused determines that a charge sheet be submitted he shall issue a formal warrant for the arrest of the accused, and shall not direct the investigating officer to make the arrest under section 54 of the Code of Criminal Procedure.

75 If after sending in the final report of a case, a police officer obtains a clue and sufficient evidence to justify further proceedings, he shall immediately reopen the enquiry and submit a charge sheet form, should the evidence justify the accused being sent on for trial If any one is arrested, but not sent up or if no one is arrested, he shall submit a final report in the usual way

76 (a) Reports for proceedings to be taken under section 107 or section 145, Criminal Procedure Code, shall be submited in P R B Form No 51

(b) In the case of a report for proceedings under section 145, Criminal Procedure Code, only the names and residence of parties actually claiming to be in possession shall be entered in column I

(c) In column 2 a clear description of the boundaries, area etc only of such land or water as two or more parties claim to be in possession of shall be given Any area which one and not the other party claims to be in possession of shall be excluded, and a map fully illustrating the positions shall whenever possible accompany the report Disputes connected with land or water include disputes connected with buildings markets, fisheries crops or other produce of land, and the rents or profits of any such property

(d) In column 4 shall be entered the names of such persons as are considered responsible for a likelihood of a breach of the peace and who should be bound down These may include names of agents, servants or partisans to the cause of dispute In a report for proceedings under section 145, Criminal Procedure Code, this column shall remain blank

(e) The names of such witnesses as have been examined by the police, and who are able to give evidence regarding the cause of dispute, and the party or parties responsible for the probable breach of the peace shall be given In cases under section

107, Criminal Procedure Code, these witnesses shall be required to attened court to enable the Magistrate to enquire into the truth of the information (section 117 (1), Criminal Procedure Code, the column shall include the names of witnesses who are able to depose as to the exact area of which possession is disputed, or what the point at issue as regards possession is).

(f) The grounds for believing that a dispute exists and that it is likely to lead to a breach of the peace shall be clearly set forth in column 6

(g) If a copy of the Magistrate's order under section 145, Criminal Procedure Code, is served by the police it should be served promptly in the manner laid down by law, and every effort should be made to serve it personally on the parties

(h) In investigating cases of land disputes likely to cause a breach of the peace, the one and only point for determination is to ascertain which party is in actual present possession of the disputed area In collecting evidence of possession the investigating officer shall examine people holding or cultivating land in the vicinity and shall note any remarkable feature, such as boundary marks, etc bearing on the question of possession It is not necessary to go into documentary evidence except so far as it throws light on present possession e g a very recent civil court decree followed by delivery of possession or record of rights recently carried out etc may be examined with advantage

When the investigating officer finds one party in possession he shall ask the Magistrate to take action against the other under section 107 or 144, Criminal Procedure Code, and, if he finds himself unable to collect definite evidence of possession, he shall ask for action under section 145, Criminal Procedure Code The report shall always contain in addition to the reasons for apprehending a breach of the peace a summary of evidence, oral or documentary, which throws light on present possession

77 (a) When a dispute in respect of land which is likely to lead to a breach of the peace is reported the officer in charge of the police station shall, if immediate preventive action on his own part is not required issue a warning in P R B Form No 52 to the owner, occupier or other person having or claiming an interest in such land Such warning brings the owner, occupier or person claming an interest in the land within the scope of section 154 Indian Penal Code, should he not endeavour to prevent the dis pute culminating in a riot

(b) The warning shall be issued in duplicate, and the signature of left thumb impression of the person to whom it is issued shall be obtained on the duplicate copy in the presence of reliable

witnesses, whose names and addresses should be noted The exact date and hour of service shall be noted on the duplicate copy which should then be posted on to the office copy

78 (*a*) The powers of arrest without warrant possessed by police officers are laid down in sections 54, 55 57(1), 128 151 and 401 (3) Criminal Procedure Code A telegram may be considered to furnish credible information of a person having been concerned in a cognizable offence 'Cognizable offence' is defined in section 4 (*f*) Criminal Procedure Code

(*b*) An officer in charge of a police station has no legal power to summon before him any person accused of an offence The only manner in which he can enforce the attendance of such person before him is by arrest and without an arrest the attendance or detention of an accused person cannot, under any circumstances be compelled It is, therefore, to be understood that whenever an accused person is sent for and made to attend before an investigating officer he is to be considered as having been arrested and to be entered in the return accordingly The manner in which arrest is to be made is described in the sections 46 to 48 and section 53 Criminal Procedure Code No person who has been arrested may be discharged except on bail or on his own recognizance or under the special orders of a Magistrate

(*c*) Police Custody includes custody on the authority of the police: every person who is kept in attendance to answer a charge in such a way that he is practically deprived of his freedom shall be considered as in custody The police officer, who without himself arresting a person, directs some of the neighbours to take charge of him shall be responsible in the same way as if he had made the arrest himself Requiring a person's attendance by letters and deputing a constable to accompany him with orders to prevent him from speaking to any one amounts to an arrest

(*d*) The attention of all officers is drawn to section 23 of the Criminal Tribes Act (III of 1911) which provides for the arrest without warrant of a registered member of a criminal tribe, whose movements have been restricted or who has escaped from a Settlement or School, if found in a place beyond the area prescribed for his residence, and for the removal of such member for his prosecution under section 22 (1) of the said Act, to the district in which he should reside or to the Settlement or School from which he escaped

79 (*a*) The police shall be careful to abstain from unnecessary arrests In petty cases it is hardly ever necessary to arrest on suspicion during the course of an enquiry, and never necessary to arrest after the enquiry is over when the case is not to be sent up In heinous cases it is different. Police Officers should not hesitate to arrest on suspicion Having made the arrest they shall send the accused to the nearest Magistrate in the manner laid down in rule 2?3 or else release him on bail

(*b*) A free use shall be made of the discretion given by section 497 (2), Criminal Procedure Code, to accept bail in non bailable cases It shall be

borne in mind that under section 54 Criminal Procedure Code, "reasonable suspicion" will justify the arrest of an accused person but that unless the evidence is sufficient to constitute "reasonable grounds for believing in his guilt", the arrest under section 497 (2), Criminal Procedure Code should be at once followed by an offer of release on bail

80. In towns and areas to which section 34 of Act V of 1861 has been extended, but where no proper latrine arrangements exist or where there is likely to be delay in bringing persons arrested for trial or releasing them on bail, the powers of the police to arrest without warrant under clause 7 of that section may, if it is considered necessary in the interests of the public, be withdrawn by an executive order Police Officers shall in that case merely ascertain the name and address of an offender, and shall not make arrest save in the circumstances stated in section 57, Criminal Procedure Code

N B In cases where arrests are not made the court officer shall present an unstamped application signed by the circle or town inspector in each case to the Magistrate for the issue of summons

81 No arrest can be made in foreign territory without a warrant and the warrant shall go through the regular channel When a person whom it is desirous to arrest has taken refuge in foreign territory, a report of the fact shall be submitted to the Magistrate of the district, with a request that a warrant may issue and steps may be taken to procure extradition

(a) When a person who has committed a cognizable offence in British territory takes refuge in a Feudatory State of Orissa and his arrest is not emergent a requisition shall be made through the District Magistrate to the Political Agent who shall request the Chief of the State to effect the arrest of and deliver up the offender When the arrest is emergent the police may pursue the offender into the Feudatory State make the arrest, and after informing the State authorities remove the prisoner When possible the assistance of the Feudatory officials shall be requisitioned before the arrest is made and it shall be their duty to assist the British Police in doing this

(b) The police shall be careful not to give offence to the Feudatory officials by the manner in which they perform this duty A full report of all the circumstances and of the aid afforded by the Feudatory officials shall be recorded in the general diary on the return of the officer to his station

82 The officers or Agents of Feudatory Chiefs and Indian States have no authority to make arrests of criminals in British territory, but they may pursue criminals accused of extraditable offences and seek the aid of the British police in securing their arrest When the police authorities of a Feudatory or Indian State consider that in the interest of law and order,

a house in British India should be searched, an officer not below the rank of an officer in charge of a police station should apply direct to the officer in charge of the police station in which the search is required to be made The latter should then proceed to make the search as he would upon a requisition made under section 166 (1) of the Criminal Procedure Code

Mutatis mutandis the same procedure should be followed by the police of British India when it is necessary to search a house in an Indian State

84 The police shall not arrest any fugitive from a Feudatory or Indian state without an order from the District Magistrate, provided that in the case of extraditable offences if the accused is pursued by the police of such State and his arrest claimed, he shall be arrested if the suspicion attaching to him be reasonable, but the person so arrested together with any property recovered from him, shall not be removed to the Feudatory or Indian State until receipt of the District Magistrate's orders

85 The rules regulating the procedure to be followed in obtaining the arrest of offenders who have escaped to the United Kingdom, a colony, or some other British possession are to be found in Appendix IX

86 When the immediate arrest of persons employed in the railway, telegraph or post office service would cause risk and inconvenience to the public, the investigating officer shall make arrangements to prevent escape and apply to the proper quarters to have the accused relieved In cases where immediate arrest can be made without risk or inconvenience to the public, notice of the arrest shall at once be sent to the official superior of the accused to enable him to arrange for his duties

87 Whenever any one subject to the Indian Articles of War is arrested notice shall be given forthwith by the police to the officer commanding the troops to which he belongs

88. An Army deserter shall on arrest or surrender be taken to the nearest police station where the officer in charge shall make out a certificate in P R B Form No 57 specifying the date and place of arrest or surrender This certificate must be signed by the officer in charge who shall record below his signature the words "officer in charge" and the name of the police station, and shall be sent without delay to the officer commanding the unit to which the deserter belongs

The deserter shall then be taken, (*a*) if deserter from the British Army, to the nearest Justice of the peace (cf secs 22 and 85, Cr P C) (*b*), if a deserter from the Indian Army, to the nearest Magistrate, either of whom shall prepare a descriptive return and make a summary enquiry preliminary to handing him over to the military authority

89 (*a*) When a person arrested has to be kept in custody, and is in such a state of health that he cannot be removed without serious risk to himself or others, the officer making the arrest shall make suitable arrangements for procuring medical aid for him

(b) When it is necessary to provide medical aid for a prisoner the nearest Government medical officer should be called if he is within reasonable distance, but when no Government medical officer is within reasonable distance the nearest private medical practitioner should be employed, and his services paid for The officer in charge of the police station shall submit a bill for payment through the superintendent of Police to the District Magistrate, who will meet the charge from his contingencies

90 When persons are searched under section 51, Criminal Procedure Code, and the police take charge of articles, a receipt shall be granted to the prisoners A list of the property shall be attached to the charge sheet form Court officers shall see that prisoners hold such receipts

91. Directly an accused person is placed under arrest the investigating police officer shall ask him whether he has any complaint to make of ill-treatment by the police, and shall enter in the case diary the question and answer If an allegation of ill treatment is made, the investigating officer shall then and there examine the prisoner's body if the prisoner consents to see if there are any marks of ill treatment and shall record the result of his examination He shall further consider and note whether there is any reason to believe that marks found are attributable to other causes than ill treatment, such as resistance to arrest If the prisoner refuses to allow his body to be examined, the refusal and the reason thereof shall be recorded If the investigating officer finds that there is reason to believe the allegation of ill treatment, he shall forward the prisoner with his complaint the record of corporal examination, any other evidence available, and if possible the police officers implicated by the prisoner's complaint to the nearest Magistrate *having jurisdiction to inquire into the case*

92 (i) Whenever it is necessary to submit a person suspected to have been concerned in any offence to identification, the proceeding should be conducted whenever possible in the presence of a Magistrate, or Gazetted Police Officer or a Sub Registrar or if no such officer is available in the presence of two or more respectable persons not interested in the case who should be asked to satisfy themselves that the indentification has been conducted under conditions precluding collusion The identification proceedings should be undertaken as soon after the arrest of the suspected person or persons as possible, and care should be taken that before the commencement of the proceedings the identifying witnesses are kept in charge of a court peon or other person not being a police officer at such distance from the place where the proceedings are held as to have no chance of seeing the suspects The suspected persons should if possible, be paraded along with 8 or 10 persons or if there are more than one suspect, with as many as 20 or 30 persons similarly dressed and of the same religion and social status Care should be taken that the mixing up

suspect or suspects with the other persons does not take place in view of the police officers and the witnesses Each identifying witness should then be brought up singly in charge of the Magistrate's orderly or some other person not being a police officer, to pick out the accused if he is able to do so The identification by such witness should be conducted out of sight and hearing of other witnesses If there is any fear that the identifying witnesses may be subjected to threats or injury, should they become known to the suspects or to their friends the witnesses should be allowed to view the persons paraded from a place where they themselves cannot be seen as for instance through a window or an opening in a door or a wall When the officer conducting the identification has satisfied himself that no communication between the police and the witnesses was possible, he should give a certificate to this effect

(ii) A statement in P R B Form No 58 should be prepared when suspects are presented for identification, and when the identification is not held in the presence of a Magistrate the witness should be prepared to testify to the fairness of the manner in which the identification was effected in the proper columns

(iii) These rules apply only to instances in which suspects have been arrested and have to be confronted with witnesses who express themselves able to recognise them by appearance, although not previously acquainted with them When as frequently happens, the complainant or other witness states that amongst his assailants he recognised certain persons of his acquaintance either by their appearance or by their voice, his credibility is a matter for the courts and no departmental rules can become applicable

(iv) It should be borne in mind that the primary object of identification proceedings is to test the ability of the witness to identify a suspected person and to ascertain whether there is sufficient evidence to place him on trial A Magistrate or Gazetted police officer is chosen merely as a person whose impartiality and honesty is less likely to be called into question by the defence when the case is under trial, and when conducting the proceedings he is not acting in a judicial capacity (unless the case is under trial before him) It is not his duty, therefore to record statements or put questions to suspects or witnesses except such as are necessary for the purpose of identification While on the one hand the identification should be conducted with complete fairness and impartiality, on the other hand no attempt should be made to confuse or puzzle a witness or to create conditions which would render a witness who is honestly capable of identifying incapable of doing so

(v) An officer not below the rank of an inspector, and preferably a gazetted officer, shall invariably attend every identification proceedings to see that they are properly conducted The investigating officer, though his presence may be necessary outside shall not be present while the identification is in progress In a case of emergency, however, when the attendance

of an inspector or a gazetted officer cannot be procured without an amount of delay which is desirable under the circumstances of the case, the investigating officer may remain present to watch the proceedings on behalf of the police, but he shall make a note in the remarks column of the statement giving clearly the reasons why such a course was necessary

(vi) In rioting or other cases the police shall keep the persons arrested during the occurrence distinct from those arrested afterwards on suspicion of having taken part in it Police Officers shall use the utmost care to prevent the identity of rioters and other offenders caught in the act from being impugned at the trial The names of the offenders and of the persons arresting or identifying them shall be recorded as soon as possible in all cases, before the prisoners are removed in custody from the spot, and the place and hour of arrest shall be most accurately noted Offenders caught red handed shall be kept quite distinct from those arrested on suspicion

93 The officer in charge of a police post shall be responsible for the safe custody of all prisoners brought to the police post

94 (i) The accomodation of each lock up shall be based on the *scale of 36 squre feet per prisoner*

(ii) A notice in English and vernacular shall be hung up outside the lock up at every police station and showing the maximum number of male or female prisoners which the lock up is authorised by Government to accommodate

(iii) The authorised number shall never be exceeded, and any excess shall be accommodated in a convenient building under an adequate guard

95 (a) Before admitting prisoners to a police lock up, the officer in charge of the post shall carefully examine the person of the prisoner for any signs of injury and record in the general diary a full description of any marks of injury found on him, if necessary calling independent witnesses from the neighbourhood to witness the existence of the injuries at the time of admission of the lock up

N B The object of this rule is to protect police officers against charges of torture founded on injuries received before the prisoner came into hands of the police

(b) He shall also search the prisoner and remove everything from his possession, except articles of wearing apparel and shall give the prisoner a receipt for all articles taken from his possession

(c) He shall then enter and examine the lock up and see that no *weapons or articles that can facilitate escape or suicide such as bamboos* ropes, tools etc are in or within reach of the lock up

96 (a) On the arrival of a prisoner the officer in charge shall note the fact in the general diary and shall tell off a guard and place an assistant sub Inspector, a head constable or a senior constable in charge He shall enter the names of the assistant sub inspector head constable or senior

constable and constables detailed and their hours of duty in the general diary

(b) At the time of relieving sentries the officer in charge of the guard and the relieving sentry shall count the prisoners and see that all is well

(c) The key of the lock up shall remain with the sentry, and except in urgent cases, such as an outbreak of fire, he shall not unlock the door without first calling the officer in charge of the police post

(d) The sentries on duty between sunset and sunrise shall be provided with a lantern which shall be kept burning brightly at a safe distance from the door but in such a position as to illuminate the interior of the lock up

(e) If it be necessary to open the lock-up or to take out a prisoner, the officer in charge of the police post shall be called and the assistance of other constables taken, if necessary

(f) Prisoners shall be taken out to relieve nature at so late an hour as possible before officers retire to rest in order that it may not be necessary to open the lock up again during the night Before being taken out they shall be secured with leg shackles handcuffs or rope They shall not be allowed out of sight and when relieving nature shall be attached by means of a rope to a constable

97 The following are the rules for the escort of prisoner to and from police posts —

(a) In despatching prisoner clear instructions shall be given to the escort regarding route and halting places

(b) In the generality of cases it will be sufficient to send one constable in charge of one or even two petty offenders, if really necessary, a village chaukidar shall accompany him In the event of the constable having to go aside for any purpose, he shall see that the prisoner is properly secured and if a chaukidar is available shall handcuff the prisoner's right wrist to the chaukidar's left Chaukidars selected should be able-bodied They shall be received when possible on the road, and not taken to an unreasonable distance from their villages Their diet and travelling allowance, lodging hire and lighting expenses in connection with the escort or custody of accused persons arrested by them shall be paid from the grant under 'Contract Contingencies' in the police budget

(c) Chaukidars shall not be employed more than what is absolutely necessary, as they are not liable to judicial punishment when prisoners escape

(d) If the offence with which the prisoner is charged is of a serious nature, or the prisoner is of a desperate character, or if there be a large number of prisoners the escort shall be proportionately increased, or in urgent cases more than one chaukidar may be called in to help

(e) When a prisoner sent up for trial is known to be desperate character the fact shall be reported separately to the court officer,

(f) Officers in charge shall despatch prisoners at such a time that, ordinarily they may arrive at their destination or a suitable halting place before night fall. A certificate in P R B Form No 59 shall accompany the prisoners

(g) Meals shall be taken by daylight, or if a short delay only be necessary, deferred until arrival at a station

(h) Officers in charge shall see, as far as possible that prisoners in transit are properly fed and treated

(i) If the party has to sleep at night on the road the constable in charge shall, on arriving at the village selected for the purpose go to the headman of the place and call upon him to provide a secure room for the custody of the prisoner or prisoners and extra men, if necessary, for night guard

(j) When prisoners go aside to relieve nature, they shall be secured by leg shackles, handcuffs or a rope They shall not be allowed out of sight and a rope shall connect the prisoner and his guard

(k) Every prisoner despatched from a station to court shall, if possible, be forwarded direct to the nearest Magistrate having jurisdiction, and shall not be sent station by station or to the next superior officer of police

(l) Police officers and others taking charges of vagrants for the purposes of European Vagrancy Act, shall take such reasonable care of the vagrants as their physical condition the season of the year and other circumstances may render advisable

(m) Police officers shall not compel witnesses or accused persons to travel long distances when they are not in a fit condition physically to stand the journey

98 (a) Prisoners arrested by the police for transmission to a Magistrate or to the scene of an enquiry, and also under trial prisoners shall not be subjected to more restraint than is necessary to prevent their escape The use of handcuffs or ropes is often an unnecessary indignity

In no case, shall women be handcuffed nor shall restraint be used to those who either by age or infirmity are easily and securely kept in custody Witnesses arrested under section 171, Criminal Procedure Code shall in no circumstances be handcuffed

In bailable cases prisoners should not be handcuffed unless violent and then only by the order of officer in charge of the police station the reason for the necessity of this action being entered in P R B Form No 58

In non bailable cases the amount of restraint necessary must be left to the discretion of the officers concerned In certain circumstances the use of handcuffs may not be necessary to prevent escape but if for instance, the prisoner is a powerful man in custody for a crime of violence, or is of notorious antecedents or disposed to give trouble or if the journe

is long, or the number of prisoners is large handcuffs may properly be used Escorts should in any case, be supplied with handcuffs for use should necessity arise

(b) In the case of two prisoners whom it is necessary to handcuff they will be handcuffed in couples, the right wrist of one to the left wrist of the other *In no circumstances should more than two prisoners be secured together*

(c) In all cases in which the use of handcuffs is allowed and considered necessary and when no proper handcuffs are available the prisoners may be secured by ropes or pieces of clothing They shall be so tied, as not to interfere unduly with proper circulation, and shall be replaced by handcuffs as soon as possible

(d) Great caution shall be exercised at all times in the removal of hand cuffs and other fastenings from prisoners in route whether by land or water

99 Handcuffs shall be kept in good order If broken, they shall be mended or replaced without delay

100 The rules for the escort of convicts apply generally to the guard ing and escorting of persons arrested by the police, so far as they are not contradictory to the rules contained in this chapter, but no person so arrested shall be subjected to more restraint than is necessary to prevent his escape

Catching Criminals with ' Lie-detector"

Tucked away in little items in the newspapers, mention of the 'lie detecter, developed by the Scientific Crime Detection Laboratory of North-western University, is becoming more and more frequent

The ' lie detector,' or, as it more formally known, the Keeler Polygraph, already has been of much use in crime detection Fred E Inbau, of the Northwestern University School of Law, recently reported in "The Scienti fic Monthly" that approximately 2 000 bank employees in fifty two Chicago banks had been examined with the instrument in the last three years to detect embezzlers

From 10 to 25 per cent of the entire personnel of many banks so examined were found to be lying regarding thefts of money In nearly all such instances the findings of the machine later were substantiated by voluntary confessions

"Lie-detectors ' of one kind or another have been used for many genera tions Long before psychologists ever attempted to devise scientific method of detecting deception, it was recognized that conscious lying ordinarily produces evident emotional disturbances Some persons when lying invari ably blush , others squirm, squint, speak in a peculiar tense monotone, or exhibit other signs of effort not to betray themselves

Ancient Methods

In China there is said to have been an ancient method of lie detection, the accused was requested to chew rice and then spit it out for examination If the rice appeared dry, the subject was considered guilty, his fear of detection was supposed to inhibit the secretion of saliva

Many college laboratories to-day use 'lie detectors' to demonstrate the known fact that emotional disturbances, such as those accompanying lying change the electrical resistance of the skin These instruments generally consist of a galvanometer and Wheatstone's bridge, and measure variations in a small and imperceptible current passed through the body during the questioning Such instruments are highly sensitive—possibly too much so They measure all sorts of emotional states, and may be unfair to the subject.

The Keeler Polygraph is an entirely different type of apparatus, and was developed through many years of experimentation in this country, principally by Dr William M Marston, of New York, psychologist Dr John Augustus Larson, research psychiatrist of the Chicago Institute for Juvenile Research, and, more recently, by the youthful Leonarde Keeler Assistant Professor of Law at Northwestern University

The instrument consist of three units—one for recording respiratory changes and a second for the pulse-wave and blood pressure The third makes a duplicate blood pressure and pulse curve or records muscular reflexes of the arm or leg Only the first two are needed for the detection of falsehood The third is an accessory which serves to check the other two.

For obtaining the bodily reactions a rubber tube known as a pneumograph is placed around the chest, and a blood pressure cuff, of the type ordinarily used by physicians in measuring the blood pressure, is fastened about the upper arm Rubber tubes approximately a quarter of an inch in diameter lead from the pneumograph and the cuff into apparatus to which are attached stylo

At the tip of each stylos a small cup filled with ink feeds the pens as they fluctuate with each pulse beat and respiratory movement The movements thus are recorded upon a slowly travelling paper strip driven by a small synchronous motor

In giving a test, the subject at the beginning is asked a series of unimportant questions, for example Have you had breakfast this morning?" requiring an answer of "yes' or no

These questions enable him to get used to the apparatus and also record any abnormalities, such as high blood pressure or irregular pulse or psychological difficulties, such as emotional instability caused by fear, anger or other disturbing factors The normal showing made by the subject in the preliminary questioning is used in judging his reaction significant questions.

Crime and confession

In the last three years Professor Keeler and members of the staff of the Scientific Crime Detection Laboratory have examined almost 3 500 persons involved in all sorts of crimes ranging from petty theft to murder They also have used the machine in many hundreds of tests on students and others to determine the accuracy of the results

In experimental cases the outcome of which is of no importance to the subject there is an accuracy of approximately 85 per cent. When the subject has an interest or stake in the outcome even if it is only a small bet that he can beat the machine the accuracy goes up

In criminal cases it is more difficult to check up but it is significant, Professor Keeler thinks that full confessions have been obtained from criminals in 75 per cent of the cases in which the record indicated deception

The testimony of the lie detector has not yet been admitted as evidence in any court However, it is generally considered only a matter of time until it will be. In the meantime several Chicago banks *will not* employ an applicant for a position unless he submits to a Polygraph test

Convicted by Lie detector—Machine which decides if man is telling truth

Two men here have had the doubtful pleasure of being first in the world to be convicted by a Lie Machine

The lie detector was elaborated by Mr Leonard Keeler of the Crime detection Laboratory of the University of the Northwest and it has just won legal recognition and its use in American courts is expected to increase in the future

The judge who was first to allow the lie detector to be used in evidence before a jury was Mr Justice Van Pelt of Wisconsin

Presiding over a trial for assault with intent to murder the Judge directed the jury to consider the findings of the machine as evidence and convictions were duly returned against the two men

They were accused of having robbed a shop and with having shot a sheriff who tried to stop them when they were escaping in a car The lie detector was strapped to the arm and chest of one man and when he was asked whether he shot the sheriff, violent fluctuation was recorded in the chart as he replied in the negative The other man s reply showed similar fluctuations although when answering other questions their reaction were recorded as normal

Charging the jury the Judge said the machine s testimony only tended to show that at the time of examination the defendants were untruthful

Commenting on the Judge s remarks later Counsel said that it was a victory for those who believed in scientific crime detection and it would mean that the findings of the lie detector would be as acceptable to the court as finger print testimony

CHAPTER XIII.

INFORMATION AND COPIES.

A legal practitioner must first learn how to get information from criminal courts and how to obtain copies of proceedings thereof

Record room is a room set apart for the storage of decided cases and Record keeper is the ministerial officer in immediate charge of such records The records of decided cases are retained in the record rooms of the courts to which they pertain or of the superior court of the district and are not allowed to pass out of the custody of the officers of such courts, except when called for by superior judicial authority, or required for the *purposes of civil cases and called for by the civil court* The *Record rooms* of criminal courts are not open to the public generally, but public officers of the district including Head clearks may, with the permission of the Sessions Judge or District Magistrate, as the case may be be allowed to enter the Record room and in the presence of the Record keeper or one of his assistants deputed for the purpose to examine the record of any specified case provided that such entry is made in pursuance of a public purpose Pleaders and Mukhtars duly authorised by any person in that behalf (which can be done by filing a vakalatnamah) may, under similar conditions and at a place to be provided for the purpose in the Record keeper's office examine any specified record, but in doing so they shall make no notes other than pencil notes (on slips to be provided by the Record keeper) in regard to the particulars of the papers on the record If any extract from the record is required it can be had by obtaining copies The examination of records by pleaders shall be allowed only on office days and during such office hours as the Sessions Judge or District Magistrate may prescribe A fee of 4 annas is charged for searching for all documents of which copies are applied for, whether certified or uncertified This fee is charged by means of a court fee stamp to be affixed to all applications for informations or copies except such copies as the law requires to be given free of cost In the case of applications for information the searching fee shall be the only fee required to be affixed to the usual application form (which can be had from the court's office) one searching fee only shall be charged for any number of copies taken from the same record and included in the same application No searching fee shall be charged in respect of copies of papers which have not been deposited on the rack of the Record room The searching fee is intended to meet all cases of search, no distinction being made between searches

which entail a small amount and those which require a large amount of labour As regards applications for copies, only one application with a single court fee stamp of one anna is necessary when a copy is applied for of any number of documents on the same record, but when copies are required of documents in more than one record, there must be separate applications with a separate stamp for each No fees are to be required or paid for searching for or copying papers wanted by public officers for public purposes Pleaders before making the examination of the record should pay the above searching fee, but no searching fee should be charged from pleaders for looking at the records of the pending cases

In criminal cases parties are entitled to obtain copies certified or uncertified of any portion of the record of trial, covering such police papers as may be made use of as evidence at the trial As a general rule, copies of exhibits in a criminal case are not generally granted to persons who are strangers to the case A Magistrate should use his discretion in each case acting on the general principle that no copies should be given to a stranger without very good cause being shown All applications for information or for copies of papers or documents other than those on which expedition fees are paid shall be made at a place and to the officer designated for that purpose by the Sessions Judge or District Magistrate between the hours of 11 and 1 or 6-30 and 8 30 as the case may be The officer to be so designated shall be either the Record keeper or such other paid ministerial officer of the court as can be spared The officer taking the duty on each day shall be noted by the ministerial Head of the office in the office diary Applications for information shall be presented in duplicate on a printed form to be obtained from the Nazir or Head clerk as the case may be, at the price of 1 pice or ½ anna per sheet or 100 for a rupee The applicant is to present it with the duplicate spaces reserved for the date his name and residence and particulars of the informations required to be filled up The officer recording such application is to enter in duplicate in the first column the consecutive number, and in the fifth column his signature If he can furnish the information at once he will note the same on the upper portion of the form in the column for remarks and make that part over to the applicant taking the latter's receipt in the column for remarks in the lower portion, which will be retained and recorded in the office If he cannot furnish the information at once he will enter it duplicate in the fourth column of the form the date by which the information can be furnished The upper and lower portions of the form, with columns 1, 2, 3, 4 and 5 thus filled up will then be separated The lower part will be made over to the applicant with a direction to return with it at the time fixed The upper portion will be passed on to the amlah, to whose department it pertains who will enter in the column for remarks the necessary information, and return it to the receiving officer before the time prescribed. On the applicant reappearing the upper portion, bearing the information,

will be made over to him, and the lower portion, bearing his dated receipt in the column for remarks will be taken from him and recorded in the office

When a copy of a Judgment or decree or any other document is required the party requiring the same shall deliver to the officer designated, an application signed by his pleader or by his authorized agent or by himself, if acting in person, in forms which will be obtainable in loose sheets in the same way and at the same cost as the above mentioned forms Every such application shall be entered in the Register for applications for copies, and numbered consecutively as received and the date of receipt shall be noted or stamped thereon, and it shall be the duty of the officer to whom the requisition is delivered at once if possible or during the same day, or not later than the following day to ascertain the amount of court fee stamps payable for the copy asked for and the number of folios required for its preparation and to inform the applicant thereof When such information cannot be given at once the officer shall inform the applicant when he may expect to obtain it and shall note on the back at the counterfoil of the application—' Told to attend on the * * * The counterfoil shall then be returned to the applicant and it shall be his duty to attend at the time named On the day on which the application is received a requisition for the document of which a copy is required or the record in which it is contained shall be forwarded by the copying department to the proper officer The document or record shall be made over by such officer to the copying department not later than the day following or if it cannot be traced, a note to that effect shall be sent The amount of court fee stamps and the number of folios required shall then be entered in the middle portion of the form and the applicant, on his appearing shall be required to put his signature thereto as an acknowledgment of his having received the information The applicant shall further be informed that his application will not be considered complete and that the preparation of the copy will not be commenced until he has supplied in full court fee stamps and the number of folios The applicant shall at the same time present the counterfoil of his application which has been returned to him and a memorandum shall be made thereon stating the date and hour when the copy will be ready A corresponding note shall be made on the body or main portion of the form, which shall then be passed on into the office together with the stamps and folio for the preparation of the copy The applicant shall retain the counterfoils and it shall be his duty to attend on the date fixed for the purpose of receiving the copy The number of folios required should be carefully calculated so as to obviate the necessity of obtaining additional folios from the applicant a contingency which, under a proper system ought never to arise Each clerk through whose hands an application for copies passes shall put his initial and

of receipt and passing on by him on the back of the application These entries should be made one below the other (the first to be about two inches from the top and three inches from the left hand side of the reverse of the application) and must be legibly written When a clerk receives and passes on the applicant on on the same date, that day's date and his initials will suffice When however he retains the application over the day, he must enter both the dates of receipt and passing on thus 12/13—7 These entries must also be initialled by the clerk concerned When any information is given to the applicant in connection with extra court fees or extra folios for urgent copies the fact should be briefly noted on the reverse of the application and signed and dated by the applicant and the clerk giving him the information When the applicant complies with this a note should be made on the reverse of the application showing the date and number of the extra folios and the date and number of the value of the extra court fees filed This note shall be signed both by the applicant and by the comparing clerk who receives them A similar procedure should be followed with regard to the number and amount of court fee stamps for certified copies When the copy is delivered to the applicant his signature therefor and the date should be taken on the reverse of the application Care is taken to have the copy ready in each case by the time fixed before which it will with the application form attached to it be handed back to the Record keeper or other officer who on the original applicant s appearance with the counter foil will make over the copy to him taking his receipt for the same on the form the date of such receipt also being taken These forms will then be recorded in the office filed in the order of their admission in a separate series for each month At the close of each quarter they will be examined by the Head clerk who will bring to notice any irregularity or unpunctuality that may be apparent in the department. The Magistrate after satisfying himself as to the working of the office by an inspection of the forms recorded will then direct their destruction Under any circumstances a copy shall be furnished not later than 1 p m of the fifth open day after the presentation of the application When an applicant requires his copies to be furnished on the day of application an extra fee of one rupee (or, if the copies exceed four folios of 4 annas for each folio) shall be charged on all copies so furnished to be levied from him by a court fee stamp which should be affixed to the application for the copy and be entered in the Register for court fee stamps Care is taken that other applicants for copies do not materially suffer by the arrangement If the granting of other copies be much delayed an extra hand is told off to furnish their copies Unused folios if any should not be retained in the office but should be attached to the copy for the preparation of with they were filed and returned to the applicant together with the copy, a receipt for both being taken Should the applicant in any case fail to appear to claim either the copy or the unused folios, both must of necessity be retained temporarily but on

the last day of each month all unclaimed copies ready for delivery before the close of the preceeding month, together with all unused folios attached thereto, shall be destroyed in the same manner as is prescribed in the case of the upper portion of the impressed stamps of folios used for copies The number of folios so liable to destruction should be ascertained from the entries in the Register In any case in which a copy cannot be granted, the folios supplied by the applicant should be returned to him when he is so informed The officer entrusted with the duty of examining a copy shall be held responsible for the copy being written with proper ink If such officer finds that a copy, the preparation of which is paid for has not been written with proper ink, he shall require a fresh copy to be made by the section-writer or typist, and the section writer or typist shall bear the cost incurred in making the fresh copy All copies whether granted free of cost or on payment, are required to be written legibly with good ink A certifed copy must be certified to be a true copy' must bear the seal of the court, and must be signed in full if not by the presiding officer, then by the officer hereinafter named, viz —

at the headquarters of a district—

all certified copies by the Head clerk of the court of the District Magistrate

in courts at Sub divisions—

all certified copies—by the Head clerk of the court of the Sub divisional Magistrate

In every case the certifying officer will append to his signature the words "authorised under section 76, Act I of 1872

Uncertifed copies should only be marked as examined' and initialled by the examiner Uncertified copies may be converted into certified copies after comparison with the originals upon the application of the person to whom they have been granted and upon his filing with such application the necessary court fee stamps required by law

When a copy of a judgment sentence or order is granted the following particulars must invariably be recorded on the back of the copy itself, and in the form given below for the information of the appellate court

Date of application for the copy

Date of notifying the requisite numbers of folios and stamps

Date of delivery of the requisite stamps and folios

Date on which the copy was ready for delivery

Date of making over the copy to the applicant Vide section 12 Act IX of 1908 Indian Limitation Act, I L R Cal 293

Copies of printed or lithographed maps and plans will not ordinarily be supplied from the Magistrate s office but application should be made to the offices where the original maps are deposited

Charges for copies—In all criminal courts a uniform charge shall made for the preparation of the manuscript copies whether certified

uncertified at the rate of 4 annas per folio. This term merely denominates a certain quantity of manuscript, the folio to consist of 150 words English or of 300 words vernacular 4 figures counting as one word

Complainants must pay copying fees whenever they want copies But an accused is entitled under section 220 of the Cr P C to a copy of the charge under S 219 Cr P C to a copy of the evidence of supplementary witnesses after commitment and under S 371, Cr P C in cases other than summons cases to a copy of the Judgment (or of the heads of the Judge's charge to the Jury) absolutely free of cost and on plain paper Similarly under S 490 Cr P C a copy of an order of maintenance shall be given without payment to the person in whose favour it is made or to his guardian if any or to the person to whom the allowance is to be paid Vide also S 545 Cr P C

The charge of 4 annas is levied by means of an impressed stamp of 4 annas on each sheet of paper corresponding with the folio to be provided by the applicant for a copy Each of these sheets shall contain a folio—that is 150 words English or 300 words vernacular As there are 25 lines in each sheet no line shall contain more than 6 words English or 12 words vernacular In the case of typewritten copies certified or uncertified the following uniform charges shall be made viz —

(1) The impressed stamped paper of 4 annas referred to in the preceding paragraph for copies of documents containing 150 typewritten words or less

(2) The same impressed stamped paper of 4 annas with an adhesive stamp of 4 annas affixed thereto for copies of documents containing from 151 to 300 typewritten words, and

(3) The same impressed stamped paper of 4 annas with an adhesive stamp of 8 annas affixed thereto for copies of documents containing 301 to 450 type written words These sheets should be used for copies of lengthy documents For the concluding portion of such documents, the stamped paper (1) (2) or (3) should be used according to the number of words remaining to be typed

The charge for obtaining copies of records in the court of Session shall be at the rate of 1600 words per rupee which should be paid to the copyist concerned.

In the *case of maps* and *plans no general* rule can be laid down In each case charge will have to be fixed with reference to the difficulty or intricacy of the work to be done Half will be paid to the copyists and half credited to Government on account of examination fees and cost of materials

In the case of *certified copies* the court fee chargeble under the Court fees Act should be levied by affixing the necessary stamp to the first folio of the copy

CHAPTER XIV.

CRIMINAL COURT PRACTICE.

Open Courts —

Magistrates and other officers entrusted with the disposal of criminal business should refrain from and strictly interdict on the part of those subject to their authority the objectionable practice of transacting public business at their private residences, instead of at the public cutcheries A magistrate can never be as accessible in his own house as at the court, and unless there are fixed hours for the regular disposal of business thereat petitioners and others will be either deterred from attending or constantly subject to much inconvenience and expense Accordingly Sec 352 Cr P C provides that—

The place in which any criminal court is held for the purpose of inquiring into or trying any offence shall be deemed an open court to which the public generally may have access, so far as the same can conveniently contain them —Provided that the presiding Judge or Magistrate may if he thinks fit order at any stage of any inquiry into, or trial of any particular case that the public generally or any particular person shall not have access to or be or remain in the room or building used by the court

This does not prove that jail trials are no trials at all Because any one who wishes might be admitted to jail to see the trial and that the prisoner might make arrangements for communicating with his friends and relations The purdanishin women can be examined behind a purdah where members of the public will not be admitted

Hour of the Court s sitting

Every Sessions Judge and Magistrate shall sit daily and punctually at the hour appointed for the opening of his court unless prevented by circumstances which are to be recorded in the proceedings of the court.

Sunday and holiday

Without the consent of parties and in the absence of urgent necessity no criminal inquiry or trial shall be held on a Sunday or a gazetted holiday The holidays published by the High Court are for observance in the civil court only the criminal courts as a rule should not be closed on days when the public treasuries are open and session ough not to be interrupted and the commencement of trials postponed excep on days when Indian usage absolutely requires the intermission of

business During the civil court vacations courts of session must never be closed for the despatch of criminal business except on those days only when a total cessation from all business is necessary and usual

In the case of trials by jury or with the aid of assessors there should be a short adjournment daily not to exceed half an hour, at about two o clock in the afternoon

Jurisdiction of the court

In every sentence or order made by a criminal court the jurisdiction of the Judge or Magistrate making it should distinctly appear on the face thereof When the law empowers magistrate of a particular grade to do a particular act or make a certain order it should always appear on the proceedings that the Magistrate making the order or doing the act is a Magistrate who had jurisdiction to do it See 22 W R Cr 30 In every process and every sentence or order (of whatever description) issued by a judicial officer for whatever purpose it may be issued or made the name of the District and of the court from which the same is issued and also the name and powers of the officer issuing or making it shall be clearly set out in such manner that it may be easily read

Signature of Judicial Officers

Judicial Officers shall in all cases sign their names distinctly and legibly Judicial Officers are reminded that in the case of all documents which are required by law to be signed the impression of a stamp bearing the officer s name is insufficient and illegal The attention of Judicial officers is invited to the fact that a criminal court in England has no powers to take evidence on a commission issued in India

Process

Processes of all kinds issuing out of a magistrate s court should be written in the language in ordinary use in the district in which it is held that is to say (with certain exceptions) the language in which the proceedings of the several courts are concluded But where a process is sent for execution to the magistrate of a district in the same province or in a different province where a different language is in ordinary use the process should invariably be accompanied by a translation certified by the transmitting magistrate to be correct into such other language or into English Moreover in such cases the process should be accompanied by a letter in English requesting its execution

Whenever a summons to appear as a witness in a criminal case is issued against an officer of Police it shall be served upon such officer through the Superintendent of the district or the Assistant in charge of the Subdivision to which such officer may belong All summons on medical

Subordinates at Sub divisions shall be moved through the Magistrate or other executive head of the district in order to enable him in communication with the Civil Surgeon, to make arrangement for the conduct of of their medical duties during their absence When jail or other departmental officers of Government who reside in the station are summoned as witness, arrangement should be made to send for them only when actually wanted Whenever it may be necessary to summon an officer or soldier in Military employ to attend a criminal court as a witness the process server, who is to serve the summons shall be instructed to take it under cover to the officer in command of the regiment or detachment with which the witness may be serving, and to apply for his assistance in serving it With the assistance, the process server shall then proceed to serve the process and shall make his return direct to the court In such cases sufficient time should always be given to admit of arrangements being made for the relief of the witness summoned Officers who are about to proceed on leave out of India, should be examined, before their departures in any pending criminal case in which they are important witnesses An officer or soldier *required to attend a court in his official capacity should appear in uniform* with sword or side arms Attendance in an official capacity includes attendance—

(a) as witness when evidence has to be given of matters which came under the cognizance of the officer or soldier in his military capacity ,

(b) by an officer for the purpose of watching a case on behalf of a soldier or soldiers under the command

An officer or soldier required to attend a court otherwise than in his official capacity, may appear either in plain clothes or uniform An officer or soldier shall not wear his sword or side arms if he appears in the character of an accused person, or under military arrest or if the presiding officer of the Court thinks it necessary to require the surrender of his arms, in which case a statement of the reasons for making the order shall be recorded by the Presiding Officer and if the military authorities so request forwarded for the information of His Excellency the Commander in Chief Firearms shall under no circumstances be taken into court Witnesses brought up under arrest should be dealt with not as criminals but simply as persons arrested on civil process

In a process issued against a person residing in a large town the description should contain not merely the name and father's name of the person to whom the process is addressed and the name only of the town in which such person resides but should give such further particulars regarding the section or street of the town in which such person resides as can be ascertained and will facilitate his identification

The fees hereinafter mentioned shall be chargeable for serving and

executing the processes to which the fees are respectively attached viz —

	Rs	A	P
(1) Warrant of arrest—			
For the warrant in respect of each person named therein	1	0	0
(2) Summons—			
For the summons in respect of one person or of the first two persons residing in the same place	0	8	0
In respect of every additional person named therein	0	4	0
(3) Proclamation for absconding party under Sec 87 of the Criminal Procedure Code—			
For the proclamation	2	0	0
(4) *Proclamation for witness not attending*			
For the proclamation	0	8	0
(5) Warrant of attachment			
For the warrant	1	0	0
Where it is necessary to place officer in charge of property attached for each officer so employed per diem	0	4	0
(6) In cases where an application is made by a complaint for the recovery of costs awarded under Sec 31 Act VII of 1870, or of compensation granted under Sec 545 *of the Criminal procedure Code* or where a defendant applies for the recovery of compensation awarded to him under Sec 250 of the Criminal Procedure Code—			
For the warrant for levy of the fine or compensation	0	8	0
(7) Written order—			
For the order	1	0	0
(8) Injunctions—			
For the injunction	1	0	0

The provisions of clauses iii and iv of Sec 31 Act VII of 1870 and of the following rules, apply also to injunctions Injunctions in proceedings not connected with offences are not chargeable with any fee An injunction under Sec 143 Cr P C would *for example* be chargeable with the above

fee, whereas an injunction under Sec 144 or 145 of the Code would not carry any fee

	Rs	As	P
(9) Notice—			
For the notice	1	0	0

Nothing herein contained shall be deemed to authorise the levying of any fee or for any summons to attend as a juror or assessor in a Court of Session, and no fee shall be chargeable in advance on any process of a Criminal Court in any case where the prosecution is on the part of Government but it shall be competent to any Magistrate in such case if the accused is convicted to order that such fees shall be paid by the accused or any of them in like manner as if such fees had been paid by the prosecutor in the first instance No process which comes within the operation of rules shall be drawn up for service or execution except upon an application made to the Court for that purpose in writing or a document bearing upon its face stamps not less in amount than the fee which is directed to be charged for serving and executing the process to be sought to be drawn up This application may however at the option of the party making it be included in the petition by which he moves the Court to order the process to issue but in that case the petition must bear the requisite stamps for the process fee, in addition to such stamps if any as are needed for its own validity and in either case the filing of the application thus duly stamped shall constitute the payment of the fee chargeable for the process When a proclamation has been issued for an absent witness if the witness shall afterwards appear, and the Court shall be of opinion that such witness had absconded or concealed himself for the purpose of avoiding the service of a warrant upon him such Court may order the witness to pay the costs of the proclamation

In Assam Behar and Bengal in the district named in the margin where the sub divisional system has not been fully introduced in every case where a process has to be executed at a distance of more than 25 miles from the Court from which it is issued, an addition of one fourth is to be made to the fee chargeable and if more than 50 miles an addition of one-half Throughout or in any part of the localities mentioned herein and for the periods of the year during which the travelling except by boats is in the opinion of the District Officer impracticable the fees chargeable for the service of processes shall be increased by 25 per cent in order to provide for payment of the boat hire or ferry toll rendered necessary by the state of the country The additional fees may however be reduced to 12½ per cent over the fees ordinarily leviable at the discretion of the District Officer in any part of a district where or at any season of the year when the levy of the larger amount found to be unnecessary

Birbhum
Bankura
Hazaribagh
Ranchi
Palamau
Manbhum
Singhbhum
Sambalpur
Cachar
Sylhet
Nowgong
Rajshahi
Dinajpur
Rangpur
Bogra
Noakhali
Chittagong
Malda

Districts	Local Area
24 Pergunnahs	The Jainagar, Matla Baruipur, Bhangar, Vishnupur, Sonarpur and Budge-Budge Thanas of the Sadar Sub division, the Haroa and Hasnabad Thanas of the Basirhat Sub-division, and the Mathurapur, Mograhat Falta and Kulpi Thanas of the Diamond Harbour Sub division
Nadia	The whole district
Murshidabad	The whole district
Jessore	The whole district
Khulna	The whole district
Rajshahi	The whole district
Dinajpur	The Raiganj Kaliganj and Bunnshihari, Thanas of the Raiganj Munsifi
Rangpur	The Kurigram and Gaibandha Sub divisions and the Kaliganj Thana of the Sadar Sub-division
Pabna	The whole district
Bogra	The whole district
Dacca	Do
Mymensingh	Do
Faridpore	Do
Bakarganj	Do
Tipperah	Do
Noakhali	Do
Chittagong	The Cox s Bazar Hath hazari North Raojan and South Raojan Munsifs
Purnea	The whole district
Bhagalpore	The Mahdepura and Supaul Sub division
Malda	The whole district
Cachar	Do
Sylhet	The whole district.
Goalpara	Do
Kamrup	Do
Darrang	Do
Nawgong	Do
Sibsagar	Do
Lakhmipur	Do

In such districts or parts of districts as are not for the time being, subject to this rule when for the service of any process a peon has to cross a ferry then the amount if any legally exigible as toll shall be paid by the court executing such process from the special permanent

advance sanctioned by the local Government for the purpose of those rules

Fees in the Municipal Magistrate's court at Calcutta —

A fee of eight annas shall be paid for every summons or warrant issued by a *magistrate appointed under the Calcutta Municipal Act, to be a* Municipal Magistrate except in the case of a summons to attend and give evidence or to produce documents in which case there shall be paid a fee of four annas, provided that such magistrate may in any case remit any such fee if he is satisfied that the complainant is unable to pay the same and shall remit it when the complaint is made by a public servant in the execution of his duty

Fee for affidavits —

It is hereby notified that with the sanction of His Excellency the Governor General in Council the following charge has been introduced into all criminal courts subject to the appellate jurisdiction of the High Court *and that it will be levied accordingly viz —*

For administering *the oath of the declarant in* the case of any affidavit one rupee

Except (1) affidavits made by process servers regarding the manner of service of processes

(2) affidavit made by any public officer in virtue of his office

The above fee shall be paid by means of a court fee stamp of not less value than the amount above prescribed and will therefore be credited to Government These fees should be shown in one of the columns of the Daily Register of court fees realised in order that it may be ascertained whether the receipt in any district are sufficient to justify the appointment of special officer to administer oaths on affidavits

Filing and complaint —

A magistrate is bound to receive all complaints whether they be preferred orally or in writing A petition of complaint requires a Court fee stamp of rupee one only to be affixed to it. Complaints should be received daily at a fixed hour either at the commencement or at the close of the day's sitting and should be immediately numbered in the order of their receipt They should be entered in the language employed by the Presidency Magistrate in recording evidence in a register kept for the purpose The entries should be made immediately after the receipt of the complaints, if complaints are received in the morning or if complaints are received in the evening the first thing on the following morning *and the entries should be signed by the Magistrate* as soon as they are made When a case is made over for trial to another officer, an entry to this effect should be made in the column for preliminary order Cases instituted under sections 182, 193 and 211, I P C and cases

by the civil court for Judicial enquiry, should be shown in the Register of complaints of offences being undoubtedly complaints made by private parties or on behalf of Government, by its officials Excise cases, unless challanged by the police, must be shown in the Register of complaints of offences also cases under sections 174, 188 and 212 I P. C The examination of the complaints is not to be a mere form but an intelligent inquiry into the subject matter of the complaint carried far enough to enable the Magistrate to exercise his judgment as to whether there is or is not sufficient ground for proceeding Complaints should ordinarily be recorded on the back of the petition The complainant must sign it because the absence of his signature vitiates the proceeding—vide 6 C W N 840 Magistrates are cautioned by the High Court against the indiscriminate use of police agency for the purpose of ascertaining matters as to which a magistrate is bound to form his own opinion upon evidence given in his presence This caution is specially needful in respect of all cases regarding offences not cognizable by the police

Sections 202 and 203 do not contemplate a Magistrate calling upon an accused person to show cause why process should not be issued against him Such procedure is inconsistent with the scheme of the code and is improper and irregular The Magistrate should not make the accused person a party to the proceedings before he has decided to issue and does issue process against him Where a man files a complaint and supports it by his oath rendering himself liable to prosecution and imprisonment if it is false he is entitled to be believed unless there is some apparent reason for disbelieving him and he is entitled to have the persons against whom he complains brought before the court and tried Where the magistrate on receiving a complaint did not order a local investigation and without recording any reasons for distrusting the complainant passed the following orders— complainant to prove his case Accused may cross examine it was held that the order was absolutely illegal The practice of conducting preliminary enquiries in the presence of the accused condemned Utility of such preliminary inquiries was pointed out: *Bhim Lal Shah v Bisu Singh*, 17 C W N 290 This case follows the case of *Bidyanath Sinha v Muspratt*, I L R 14 Cal 141, where, it was held that the sections 200 to 300 of the Criminal procedure Code must be read together and a magistrate dismissing a complaint under the provisions of section 203 on any one of the three grounds viz —

(1) if he, upon the statement of the complainant, reduced to writing under S 200, finds no offence has been committed ,

(2) if he distrusts the statement made by the complainant , and

(3) if he distrusts that statement but his distrust if not sufficiently strong to warrant him in acting upon it, except upon a further enquiry as provided for in S 202—

Must record his reasons for so doing, for if such reasons were not

recorded it would be impossible for the High Court exercising its revisional powers under S. 437 of the Criminal Procedure Code to consider whether the discretion of such Magistrate has been properly exercised. It was never contemplated that a magistrate should call for a report from an accused person under S. 202 for the purpose of ascertaining the truth of the complaint if such accused happened to be an officer subordinate to the magistrate. Where therefore a complaint was made against a police officer, and complainant's statement was duly recorded, and the magistrate acting under the provisions of S. 201 called for a report from such police officer, and acting upon that report dismissed the complaint under S. 203 it was further held that he had acted illegally and his order made under the last named section should be set aside and the case proceeded with according to law from the time at which the complaint was made and the complainant's statement so recorded.

In the case of *Dwarkanath Mandal v. Beni Madhab Banerjee* 28 Cal. 652 F. B. it was held that a Presidency Magistrate is compelled to re-hear a warrant case triable under Chapter XXI of the Code of Criminal Procedure in which he has discharged the accused person. Where a Presidency Magistrate by reason of the absence of the complainant and without pronouncing any opinion as to guilt or innocence of the accused person strikes off the case, his order is not a judgment within the meaning of the Code and may be altered or reviewed by him upon application being made, but where the magistrate after taking evidence, however incomplete that evidence may be, exercises his judgment and makes an order of discharge he is not competent to review or alter it, and make further inquiry without the order of the Superior Court. In the case reported in 26 Cal. 726 F. B. it was held that a Magistrate in a warrant case having passed an order of discharge is competent to take fresh proceedings and issue process against the accused in respect of the same offence without an order for further inquiry being passed under S. 437 of the Criminal Procedure Code having the effect of setting aside such order of discharge.

The Government has reason to believe that the examination of complainant is often made in a very superficial manner and that even when a Magistrate examines a complainant with sufficient care to enable an opinion to be formed as to the truth of the complainant he frequently records the complainant's statement with extreme brevity, omitting all details regarding the date, hour and place of the alleged occurrence and the names of witness. It is a common practice to name a number of witnesses without specifying whether they are witnesses to the occurrence or only to collateral matters such as enmity, character &c. The careless record of the complaints facilitates the subsequent manufacture of false evidence and frequently makes it impossible to take action successfully against the complainant if his case be eventually declared false by the

trying Magistrate The result is often extremely unsatisfactory, and in the opinion of the Government it is not fair to the accused to allow him to be brought to trial before a proper record has been made of the charges brought against him by the complainant

Recording of Confession—

It is desirable that Magistrates should act with deliberation in examining persons brought before them for the purpose of making confessions and should as far as possible satisfy themselves that the confession is voluntary—and this not merely from the declaration of the accused but from an attentive observation of his demeanour It is not proper to allow the police officer who brought the prisoner to be present while the confession is being recorded by a Muharrir, and to suggest question to be put to the confessing prisoner

Magistrates should give special attention to the provisions of sections 24 to 28 of the Indian Evidence Act 1872 and of section 164 of the Code of Criminal Procedure 1898 The following are some of the safeguards which should be adopted against malpractices and the acceptance of confessions improperly obtained

(1) Where at any place or station there are present more Magistrates than one confessions should in general be recorded by the Magistrate specially selected for this purpose by the District Magistrate, or, failing such selection by the Magistrate senior in rank or class

(2) Confessions should ordinarily be recorded in open court and during court hours

(3) During the examination of the accused and the record of his statement unless in the opinion of the Magistrate the safe custody of the prisoner cannot otherwise be secured, police officers should not be present. In particular the police officer concerned in the investigation of the case or in the arrest or production of the accused should be excluded

(4) When the accused is produced the Magistrate should ascertain when and where the alleged offence was committed and by questioning the accused should further ascertain when and where the accused was first placed under police observation control or arrest

(5) The Magistrate should next question the accused in order to ascertain whether he is about to speak voluntarily It should be made *clear to the prisoner that he is free to speak or to refrain from speaking* as he pleases, and he should be warned that if he chooses to speak, anything he says will be used in evidence against him

(6) When, upon questioning the prisoner and from observation of his demeanour the Magistrate has reason to believe that the prisoner is speaking or is about to speak voluntarily the magistrate should then proceed to record his statements While carefully avoiding anything in the nature of cross examination the Magistrate should endeavour to record

his statement in the fullest detail, and to this end may properly put such questions not being leading questions, as may be necessary to enable the prisoner to state all that he desires to state and to enable the Magistrate clearly to understand his meaning

Remand

Magistrates should also carefully follow the provision of Sec 167 of the Code of Criminal Procedure and bear in mind the importance of exercising a sound judicial discretion in the matter of granting or refusing remands thereunder

(1) Orders under the section, it is to be observed, should be made in the presence of the prisoner and after hearing any objection he may have to make to the proposed order

(2) When further detention is considered necessary the remand should be for the shortest possible period

(3) Applications for remand to police custody should be carefully scrutinised and in general should be granted only when it is shown that the presence of the accused with the police is necessary for the identification of persons, the discovery of identification of property, or the like special reason

(4) Applications if ever made, for the remand to police custody of a prisoner who has failed to make an expected confession or statement, should not be granted

Adjournments —

The evidence of witnesses should invariably be recorded as soon as possible after their attendance If from unavoidable causes, an adjournment is indispensable, there should be no unnecessary delay Witnesses remaining over one day should, as a rule, be examined at the first sitting of the court on the following day, and every effort should be made to minimise the inconvenience to which they may be put After the examination of the witnesses has commenced the trial or preliminary inquiry under Chapter XVIII of the Criminal Procedure Code should be proceeded with until all the witnesses in attendance have been examined those for the prosecution being first examined , and if any witness be detained for a longer period than two days the magistrate should be careful to record the reason for such detention on the order sheet of the case When it is deemed necessary to adjourn the hearing of a case the adjournment shall be for as short a time as possible and no person accused of any offence shall be remanded to custody for any period exceeding fifteen days Chief Magistrates of districts should carefully supervise the returns of their subordinates as they will be held responsible for the corrections of irregularities the prompt discharge of witnesses and the early completion of trials

While no hard and fast rule can be laid down with regard to the [illegible] of adjournments for securing the arrest of other offenders in the same

Magistrates should see that adjournments for this purpose are the exception and not the rule. The maximum period mentioned in section 344 Cr. P. C. should also be the exception rather than rule. Adjournments at whatever stage should only be granted for adequate reason and an accused person should not be detained except for good cause shown. Magistrates are bound to see that persons detained for reasons other than their own culpability are admitted to bail or brought to trial speedily. It is particularly their duty to prevent the detention of any person in custody for an unreasonable period before any offence against him has been proved. They should therefore scrutinise carefully all applications for adjournment submitted on behalf of the prosecution particularly when there is an undue delay in the submission of a charge sheet.

The order sheet should also contain a full statement of the reasons for which each adjournment is granted and an indication of the fact that Magistrate regards the reasons advanced as sufficient to justify him in remanding the accused.

Mode of recording evidence —

Difficulty having been frequently experienced in reading the evidence of witnesses the attention of all officers entrusted with criminal case-work is called to the necessity of carefully writing such evidence in legible manner. Depositions should be written on one side of the paper only, a margin of one fourth of the sheet being left blank. Only one deposition should be written on each sheet of paper. In the case of trials forwarded to the High Court in which from any cause the evidence has been indistinctly or illegibly recorded copies of such evidence should be submitted with the record of the case. A type-writer may be used instead of a pen by Sessions Judges and by additional and assistant Sessions Judges for the purpose of recording depositions and memoranda of evidence in criminal cases. The type-writer must be used by the presiding Judge himself and a certificate must be given that this has been done. Each page of the record so made be attested by the Judge's signature. All Magisterial officers shall in the examination of prosecutors, witnesses and prisoners record in each deposition statement or defence the following particulars which are indispensably necessary for the future identification of the parties examined, viz. the name of the person examined, the name of his or her father and if a married woman the name of her husband, the religion, caste, profession and age of the party or witnesses, and the village, thana and district in which he or she resides. As regards the examintion of complainants, witnesses or persons accused of commission of any offence under inquiry or trial before a Criminal Court the following rules should be strictly observed in every case by Magistrates and Sessions Judges —

Every witness shall be examined *viva voce* in the open Court.

A Magistrate or Judge shall not be engaged in any other business whilst the examination of a witness is going on, or whilst any documentary evidence is being read

If, after the examination of a witness has commenced, the Magistrate or Judge is compelled to attend to any other business the examination of the witness shall be suspended as long as such other business is being attended to

The examination of a witness shall not be interrupted for the purpose of enabling the Magistrate or Judge to attend to other business, unless such business is of an urgent nature

It shall be the duty of every appellate Court subordinate to the High Court to examine the memorandum of the evidence made by the Subordinate Court and report to the High Court cases in which it shall appear that the above rules have not been strictly and properly attended to

The evidence of every witness shall invariably be recorded in the presence of the officer who may decide the case except the cases provided for by sections 349 and 350 of the Criminal Procedure Code

In deposition in which there may be any doubt as to the exact meaning of any expression used and in which the doubtful expression has an important bearing on the offence with which the prisoner is charged the High Court would suggest the expediency of transcribing in Roman characters the words actually used in order that the Court may be in a position on the matter coming before it without fear of error to determine on their exact signification and in consequence, to give them their due and proper weight Should any instance occur in which a foreign language is used or in which the evidence may be delivered in a dialect to which a Judge may be accustomed an interpreter should be employed (See Sec 513 of the Criminal Procedure Code and Sec 5 Act X of 1873

Attention is invited to the provision in sec 360 of the Code of Criminal Procedure, which requires that in all enquires and trials referred to in Sec 356 as the evidence of each witness is completed it shall be read over to him in the presence of the accused if in attendance, or of his pleader if he appears by pleader This requirement should be strictly observed Its omission not only may be a bar to a successful prosecution of a witness who has given false evidence but may even result in the trial being infructuous Where the depositions of witnesses were read over while the case was proceeding so that the accused and his advocate could not attend to the reading over being occupied with listening to the further evidence that was being given and they were not so loudly read that the accused or his advocate could hear them, and in some cases the depositions were not read out to the witnesses at all, they being left to read them for themselves and it appeared that t

course taken was adopted in order to save time and to meet the wishes of the counsel for the accused and there was no allegation that the accused suffered any prejudice it was held that upon the strict construction of the section of the Code of Criminal Procedure there was no violation of their provisions in the course taken with respect to those witnesses whose depositions were read over to them as stated above The object of reading over the deposition is to obtain an accurate record from the witness of what he really means to say and to give him an opportunity of correcting the words which the Magistrate or his clerk has taken down It is not to enable the accused or his advocate to suggest corrections It would however be a better course, if depositions other than formal ones were read over so that the accused or his pleader could hear them and give their undivided attention to them Care would of course have to be taken that no suggestion should be conveyed to a witness in the form of a correction which would make him alter his evidence but there might be obvious slips to which under proper safeguard attention might be called by the accused or his pleader The provisions of Sec 360, Cr P C are not complied with by giving the witness an opportunity of reading over the deposition himself, but the bare fact of such an omission or irregularity unaccompanied by any probable suggestion of any failure of justice having been thereby occasioned is not enough to warrant the quashing of a conviction which may be supported by the curative provisions of Secs 535 and 537 of the Code of Criminal Procedure The distinction between Sec 360 and Sec 361 is very marked Under the latter section if evidence is given in a language not understood by the accused or his pleader it is to be interpreted into their language while under the former section when it is read over it is to be interpreted to the witness in his own language but there is no provision for it being interpreted to the accused The irregularity condemned in the case reported in 52 Cal 159 in which some of the depositions had not been read over to the witnesses and some other witnesses had *not signed their depositions* would not by itself be a ground sufficient for quashing a conviction, though it might be taken into account with other elements of objection to the statutory character of a trial but if it were shewn that the omission did lead or even with probability might have led to some material error in the deposition not being checked the case would be otherwise The passage beginning 'unless such error in Cl (d) of Sec 537 does not qualify that clause only but also the other clauses *M Abdul Rahman v The King Emperor* 31 C W N 2 1 P C

It is the duty of the Court to disallow of its own motion either examination or cross examination upon matters irrelevant or addressed directly or indirectly to a purely ulterior or collateral object and not to the question of the guilt or innocence of the accused or calculated

to elicit either directly or indirectly the disclosure by Sec 125 of the Indian Evidence Act This duty is not only consistent with the Evidence Act but directly arises out of it The same observations apply to the undoubted rule of law that the Court shall take as conclusive (save as excepted by Sec 153 of the Evidence Act) the answer of a witness upon question put as to credit only and shall not treat the mere making the suggestion involved in the question as indicating any foundation for it

The existing provisions of the Indian Evidence Act provide sufficiently for the exclusion of irrelevant matters and the imperative language of the Act (See Secs 5 6, 64, 136 165) indicates that it was the intention of the legislature that a Court should do that, irrespective of objections made by the parties (10 B H C R 498 7 W R Cr 25) The matter is of a primary importance in such cases as it is not always safe to rely upon a subsequent exhortation to the jury to decide on legal evidence alone As regards both criminal and civil cases at present contention is limited ordinarily to such questions as are of vital importance in the case, and the Judge has power under the present law to exclude any irrelevent evidence

It is of the utmost importance that judicial officers should keep in view the powers conferred upon them by the Indian Evidence Act and should exercise the discretion in using these powers to disallow cross examination on relevant matters

Examination of the accused person

Attention is invited to the provision contained in section 342 (1) of the Code of Criminal Procedure requiring the Court to question the accused generally on the case, after the 'witnesses for the prosecution have been examined and before he is called on for his defence' This requirement should be strictly observed Its ommission may entail discussion or difficulty in appeal or revision and may even result in the trial being infructuous Where an accused is defended he should, at least be asked whether he will make any explanation himself or he will leave his defence to his counsel or pleader

The requirement is distinct from the discretionary power given to the court by the same section to put such questions to the accused from time to time as the court may consider necessary But in either case questions can only be put for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him

It follows that accused ought not to be questioned till there are circumstances appearing in evidence against him and that he ought not to be questioned inquisitorially for the purpose of forcing him to criminate himself

The object of the section is to enable the court if it thinks fit to ascertain from the accused, at any stage of the trial such explanation as he ma

desire to give regarding any statement made by a witness, and the section provides that at the close of the case for the prosecution and before the accused is called on for his defence, the court shall give the accused the opportunity of explaining any circumstance appearing in the evidence against him

In the case reported in 45 C L J 8, it was held that Section 342 of the Cr P C is applicable to a summons case and a conviction under Sec 279 I P C was set aside and retrial ordered for failure to comply with the provisions of Sec 342 Cr P C , 46 Mad 758 F B dissented from

In the case reported in 44 C L J 575, it was held that omission to state to the accused the particulars of the offence with which he is charged is an omission to comply with the provisions of Sec 242 Cr P C being omission as to the mode of trial and is an illegality

Under S 342 it is the duty of the court before drawing an adverse inference against the accused on any point to call his attention to it and ask for an explanation Where the Judge fails to do so the accused cannot be said to have failed to explain and no adverse inference can be drawn against him 57 C L J 177 P C

CHAPTER XV.

THE LAWYER.

Pleader —

"Pleader" used with reference to any proceeding in any court means a pleader or a mukhtar authorised under any law for the time being in force to practise in such court and includes an advocate a vakil and an attorney of a High Court so authorised and any other person appointed with permission of the court to act in such proceeding Therefore in all classes of criminal courts other than in High Court, all grades of lawyers may appear The definition therefore is a wide one

Vakalatnama —

Sec 340 of the Code of Criminal Procedure provides that any person accused of an offence before a criminal court or against whom proceedings are instituted under the Code in any such court may of right be defended by a pleader The High court of Allahabad has framed a rule that no attorney or vakil except when representing another advocate, attorney or vakil shall appear or plead in any suit appeal or proceeding in the court until he has filed a vakalatnama authorising him to act in the matter (Ch XV r 22) The rules of the Calcutta High Court are not so clear The Calcutta High Court provided in its rules that the rules relating to application and affidavits shall apply *mutatis mutandis* to similar matters in the Criminal Jurisdiction In the rules relating to application and affidavits it has been provided that when any vakalatnama is filed by a vakil he shall endorse on the back of it the name of the person from whom it is received and if such person is neither the client himself nor a vakil or attorney or enrolled mukhtar shall state the nature of the authority with date of that person But there is nothing in the rule that a vakil must file a vakalatnama in criminal cases The Government of Bengal issued a circular requiring Mofussil criminal courts to insist on the filing of separate powers by a party in a criminal case in which he is represented both by a pleader and a mukhtar No doubt it is the practice in the Mofussil courts to file vakalatnamas or Mukhtarnamas in criminal cases But it may be noted that no vakalatnama is necessary in the Calcutta Police Court

Limitation —When a client approaches a lawyer the first to look to is the question of limitation In original criminal ca

question of limitation arises But stale applications are not usually entertained So far as appeals are concerned, the following articles of the second Division of the First Schedule of the Indian Limitation Act (Act IX of 1908) are important

150—Under the Code of Criminal Procedure 1898 from a sentence of death passed by a Court of Session	Seven days—The date of the sentence
154—Under the Code of Criminal Procedure, 1898 to any court other than a High Court	Thirty days—The date of the sentence or order appealed from
155—Under the same Code to a High Court except in the cases provided for by article 150 and article 157	Sixty days—The date of sentence or order appealed from
157—*Under the Code of Criminal* Procedure 1898 from an order of acquittal	*Six months—The* date of the order appealed from

According to the practice of the High Court an application for revision in criminal cases must be presented within 60 days from the date of the order complained of exclusive of the time necessary for obtaining copies In the case of *Kishan Dayal Chaukidar v Darjeeling Municipality* (I L R 54 Cal 394) their Lordships Mr Justice Cammiade held that it is now well settled by authorities that an application to the High Court against an order of a criminal court should be made within 60 days of the date of that order excluding the time required for obtaining copies Their Lordships referred to the cases reported in I L R 43 Cal 1079 and in 25 C L J 564 Their Lordships further held that the fact that one Division Bench of the High Court has issued a Rule *exparte* does not *per se* disentitle the Bench hearing that Rule to question the propriety of the order on the ground that the application was made too late and that Bench can decide the point in the presence of the opposite party The consideration that prevailed with their Lordships in coming to the conclusion in the case in 50 cal 423 that the High Court having issued a Rule it should be heard on the merits was that it was simply a matter of mere procedure for that matter had to be finally settled by the High Court—whether it was by reference by the Sessions Judge or on an application by a party to the High Court This case was distinguishable There an application was made to the High Court and a Rule granted against an order passed by Magistrate of the 1st class on appeal from a Subordinate Magistrate It was pointed out that the proper procedure was to move the Sessions Judge for a reference to the High Court. This the petitioner had not done and it was argued that

the Rule should be discharged upon that ground The learned Judges held that in the circumstances of the case High Court having issued the Rule it should be heard on the merits The consideration that prevailed with their Lordships to come to that conclusion is very different from other cases Where an application was made to the High Court nearly eight months after the Magistrate's order and five months after the Sessions Judge's order and the petitioner averred that his application to the High Court could not be made in time owing to an oversight on the part of his legal adviser who thought the High Court had to be moved within 60 days of the Sessions Judge's order—this is hardly a ground for departing from the settled practice of the High Court and the Rule was therefore discharged

Abatement —The question of abatement of suits is very important in civil cases But there are two sections of the Code of Criminal Procedure which deal with this matter The first section which deals with this question is the section 145 which provides that proceedings under this section shall not abate by reason only of the death of any of the parties In other words the Magistrate has been authorised on the death of a party to make the legal representative a party to the proceedings and if necessary, to decide who such legal representative is But this sub section relating to abatement in section 145 cases does not apply to High Court vide 17 Cr L J 389 The second section 431 provides that every appeal under section 417 shall finally abate on the death of the accused and every other appeal under that chapter (except on appeal from a sentence of fine) shall finally abate on the death of the appellant It has been held that the principle of this section applies also to motions (1919) P R 8

Offence —When a client approaches a lawyer and informs him that he has been aggrieved by an act done by another person the first thing which the lawyer must see is whether such an act is an offence within the meaning of the Penal Law Offence means an act or omission made punishable by any law for the time being in force it also includes any act in respect of which a complaint can be made under section 20 of the Cattle Trespass Act, 1871

The lawyer must see whether the act or omission complained of is a criminal offence or a mere civil wrong In connection with a case of Criminal Breach of Trust it was held that no countenance can be given to the view that the language of the statute can be used to rank within the category of crime conduct or actions which do not essentially partake of the nature of embezzlement in the sense in which that term is ordinarily and properly understood Although the term embezzle is supplemented by the terms squander away or destroy' the whole context and view of the section show that the latter expressions are amplifications or exemplifications of the operations which are of the nature of embezzlement in sense that the conduct which is libelled has been a wilful appropria

the accused of the property of another, or, after possession of the same has been acquired of the wilful squandering or destruction of it to his prejudice The mixture of the funds of another with one s own funds may be in many cases natural and proper in other cases convenient but irregular, and in the third both irregular and criminal The distinction between these cases require to be treated with the greatest judicial care so as, while preserving the amplest civil responsibility, to prevent the third or criminal category from being extended to mistaken though convenient acts This is only to say that apart from constructive criminal responsibility which of course may be imposed by statute a court of Justice cannot reach the conclusion that crime has ben committed unless it be a just result of the evidenc that the accused in what was done or omitted by him was moved by the guilty mind The act is wilful and fraudulent if he ought to foresee that a prejudice can result It is not sufficient for him to state that he did not wish to cause prejudice nor can he defend himself by saying that he did not foresee the result He ought to have foreseen it It was the duty not only to himself but to those for whom he acted to take such precautions and to have exercised such foresight as would not have involved him in the possibility of creating prejudice In so far as this is a statement of law, it is a proposition of constructive crime, and does not appear to be warranted by any general principle of law or by any sound interpretation of the section It was further contended that in the case the wilful and fraudulent intent resulted from the fact that the accused used moneys entrusted to him and that he rendered himself unable to produce when the demand was formally and legally made It is sufficient to say even though the legal doctrine proceeded upon were sound that the facts proved do not warrant but negative the conclusion If they were all persons taking charge even for a day, or at the earnest solicitation of friends of funds for investment, could be held criminally liable for errors in investment, or even for sanguine forecasts about investment although their motives had been generous, and their conduct undeniably honest These propositions are not made in order to mitigate the rigour of that civil responsibility which must attach to all dealings with the property of others but they are so elementary as grounds of distinction between the categories of liability in a civil as distinguished from a criminal suit See *Louis Edward Lanier v The King* 18 C W N 98 P C

Place of Inquiry or Trial —If the offence is made out, where should a case be started? Ordinarily place of inquiry and trial is the place where the crime is committed If the offence is committed within Presidency towns the case must be instituted in the Court of the Chief Presidency Magistrate If the offence is committed outside the Presidency towns the case should be started in the Court of the Sub divisional Officer of the Sub division within which the offence has been committed If it is committed within Sadar Sub division or in a Zillah town then before such

Magistrate who is empowered to receive petitions of complaint The whole province consists of several sessions divisions Each of such sessions divisions is either a district or consists of several districts The Local Government has power to alter the limits or the number of such divisions and districts The Local Government has divided each district outside the Presidency towns into several Sub divisions It has power to make any portion of any such district a Sub division and to alter the limits of any Sub division There is a Court of Session for every Sessions Division and such court is presided over by a Sessions Judge In some of the sessions divisions there are additional and assistant Sessions Judge to assist the Sessions Judge The powers of the Sessions Judge and the additional Sessions Judge are one and the same The powers of additional Sessions Judge are provided in the Code of Criminal Procedure In every district there is a District Magistrate In some of the districts there is another officer called the Additional District Magistrate having the same powers as the District Magistrate In every district besides the District Magistrate and additional District Magistrate there are several Magistrates of the 1st, 2nd and 3rd class Each district is divided into several Sub-divisions Every Sub division is presided over by a Sub divisional Magistrate In every Sub division there may be some Magistrates of the 1st, 2nd and 3rd class The Local Government or the District Magistrate subject to the control of the Local Government defines the local areas of police stations (the areas of which are fixed by the Local Government) within which any Magistrate may exercise all or any of the powers with which he may be invested under the Code of Criminal Poocedure The Local Government is empowered to confer upon any person all or any of the powers conferred or conferrable by or under the Code of Criminal Procedure on a Magistrate of the first second and third class in respect to particular cases or particular classes of cases or in regard to cases generally in any local are Such Magistrates are called Special Magistrates In some places in Mofussil any two or more Magistrates have formed a Bench to sit together The Local Government invests such Bench with any of the powers conferred or conferrable by or under the Code of Criminal Procedure on a Magistrate of the first second or third class and directs it to exercise such powers in such cases or such classes of cases only and within such local limits as the local Government thinks fit.

In Presidency towns the Local Government appoints sufficient number of persons to be called Presidency Magistrate and one of such Magistrate discharges the function of the Chief Presidency Magistrate The Local Government further appoints one of such Magistrates as additional Chief Presidency Magistrate whenever necessary The Local Government is also empowered to direct any two or more Magistrates to sit together forming a Bench The lawyers practising in criminal courts must k the court in which a case of a particular locality should be instit

(2) No court shall take cognizance of any offence against public justice, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, except on the complaint in writing of such courts or of some other court to which such court is subordinate

(3) No court shall take cognizance of any offence relating to documents given in evidence when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding except on the complaint in writing of such court or some other court of which such court is subordinate

(4) No court shall take cognizance of any offence against the state, unless upon complaint made by order of or under authority from, the Governor General in Council, the Local Government, or some officer empowered by the Governor General in Council in this behalf

(5) No court shall take cognizance of the offence of criminal conspiracy—

(a) in a case where the object of the conspiracy is to commit either an illegal act other than offence, or a legal act by illegal means, or an offence against the state, unless upon complaint made by order or under authority from the Governor General in council, the Local Government or some officer empowered by the Governor General in Council in this behalf, or

(b) in a case where the object of the conspiracy is to commit any non cognizable offence or a cognizable offence not punishable with death transportation or rigorous imprisonment for a term of two years or upwards unless the Local Government or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the Local Government has, by order in writing, consented to the initiation of proceedings

(6) When any person who is a judge magistrate or any public servant who is not removable from his office save by or with the sanction of a Local Government or some higher authority, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction of the Local Government

(7) No court shall take cognizance of offence for breach of contract, defamation and offences againts marrige except upon a complaint made by some person aggrieved by such offence

Provided that where the person so aggrieved is a woman who according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the court, make a complaint on his or her behalf

(8) No court shall take cognizance of an offence for adultery or enticing a married woman except upon a complaint made by the husband of the woman or, in his absence, made with the leave of the court by some

person who had care of such woman on his behalf at the time when such offence was committed

Provided that where such husband is under the age of eighteen years, or is an idiot or lunatic or is from sickness or infirmity unable to make a complaint, some other person may with the leave of the court make a complaint on his behalf

Examination of the complainant —

A magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and also by the Magistrate Where the Magistrate is a Presidency Magistrate such examination may be on oath or not as the Magistrate in each case thinks fit when the complaint is made in writing and need not be reduced to writing, but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him require it to be reduced to writing Any Magistrate on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been transferred to him, may, if he thinks fit, for reasons to be recorded in writing postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him or by a police officer or by such other person as he thinks fit for the purpose of ascertaining the truth or falsehood of the complaint

If any inquiry or investigation under this section is made by a person not being a magistrate or a police officer such person shall exercise all the powers conferred by the Code of Criminal Procedure on an officer in charge of a police station except that he shall not have power to arrest without warrant

Any Magistrate inquiring into a case may, if he thinks fit take evidence of witness on oath

The Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint if after considering the statement on oath (if any) of the complainant and the result of the investigation or inquiry (if any) there is in his judgment no sufficient ground for proceeding

Police Report —

Offences are of two kinds Cognizable offence and non cognizable offence

Cognizable offence means an offence for, and cognizable case means a case in, which a police officer within or without the presidency towns may

in accordance with the column in the Tabular statement of offences in the Code of Criminal Procedure or under any law for the time being in force arrest without warrant

Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station shall be reduced to writing by him or under his direction and be read over to the informant, and every such information whether given in writing or reduced to writing as aforesaid shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in the following form

First Information Report Form

(Vide Rule 71)

First information of a cognizable crime reported under section 154, Criminal Procedure Code at police station—

Subdivision—— District——

No Date and hour of occurrence

Date and hour when reported	Place of occurrence and distance and direction from police-station and jurisdiction number	Date of despatch from police station

N B—A first information must be authenticated by the signature mark or thumb impression of informant and attested by the signature of the officer recording it.

Name and residence of informant and complainant.	Name and residence of accused.	Brief description of offence, with section and of property carried off if any	Steps taken regarding investigation explanation of delay in recording information	Result of the Case
1	2	3	4	5

Signed

Designation

(First information to be recorded below)

Note—The signature seal or mark of informant should be affixed at foot of the information

When information is given to an officer in charge of a police-station of the commission within the limits of such station of a noncognizable offence, he shall enter in a book to be kept the substance of such information and refer the informant to the Magistrate

If from information received or otherwise an officer in charge of a police-station has reason to suspect the commission of a cognizable offence he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person or shall depute one of his subordinate officers not being below such rank as the local Government may by general or special order prescribed in this behalf to proceed to the spot, investigate the facts and circumstances of the case and if necessary, to take measures for the discovery and arrest of the offender

In murder cases the following reports are generally produced at the trial —

POST MORTEM REPORT

P M Report No 54 of 1929

Station Behala 10th day of May 1929

Name sex age, and caste	Where brought village & thana	Name of constable by whom brought & names or relatives accompanying	Date and hour of			Information furnished by police	By whom identified before the medical officer
			Despatch	Arrival at dead house	Examination		
Kartic Ch Mukherjee male, about 24 yrs Brahmin Hindu	Vill—Golshapur P S Behala	Constable No 1372 Ram Sing Rel Fatic Ch Mukherjee	6 a m 10 5 1929	8 a m 10 5 1929	1 p m 10 5 1929	Death is said to have been caused by the injuries	Const No 1372 Ram Singh Rel Fatic Ch Mukherjee (brother)

N B —Observe the state of all the organs and when no disease or injury is found write 'Healthy"

I EXTERNAL APPEARANCE

1 Condition of subject—stout emaciated decomposed, etc	2 Wounds—position size character	3 Bruises—position size and nature	(4) Marks of ligature on neck dissection etc
Fairly nourished R M present. Eyes partly opened pupil dilated Mouth partly opened tongues tip between the teeth Dry blood stains on various parts of the body and also on wearing Gunji & cloth Gunji and had an oblique cut mark about 6 long on its upper left side of back	(2) One oblique incised wound about 3 x 1 x ¾ on outer aspect of Rt elbow directed inwards and upwards (3) One small abrasion on Rt knee and another about 1½ x ½ on back of Lt elbow and another two about 4½ x ½ and 1½ x ⅛' on front of right shoulder (4) One oblique incised wound about 4' x 1½ x1½ directed upwards and forwards on upper and back of left chest notching partly the spinous process of left scapula (5) One oblique incised wound about 3 ½ [illegible] cribed above		

II CRANIUM AND SPINAL CANAL

1 Scalp skull & vertebræ	2 Membrane	3 Brain & spinal cord (The spinal cord need not be examined unless any indication of disease of injury exists)
Described skull intact.	Congested	Brain congested.

III—THORAX

1 Walls ribs & cartileges	2 Pleuræ	3 Larynx and Tracheæ	4 Right lung	5 Left lung	6 Pericardium	7 Heart	8 Vessels
Walls described healthy others	Healthy	Healthy	Healthy	Healthy	Healthy	Healthy almost empty on both sides	Healthy

IV—ABDOMEN

1 Walls	2 Peritoneum	3 Mouth Pharynx & Oesophagus	4 Stomach & its contents	5 Small intestine & its contents	6 Large intestine & its Contents
Healthy	Healthy	Healthy	Healthy About 2lbs 1 oz partly Digested rice dal etc	Healthy Fæcus	Healthy Formed Fæcus

7 Liver	8 Spleen	9 Kidneys	10 Bladder	11 Organs of generation external & internal
Healthy 2 lbs 8 oz	4 ozs	Healthy 3 ozs each	Healthy Contained urine	Healthy

V—MUSCLES BONES AND JOINTS

1 Injury	2 Disease or deformity	3 Fracture	4 Dislocation
Described	Nil	Described	Nil

CHEMICAL EXAMINER S REPORT

Form to be used by the Chemical Examiner when reporting the

RESULT OF ANALYSIS

No 1020 B

From
The CHEMICAL EXAMINER to GOVERNMENT BENGAL
To
The SUBDIVISIONAL MAGISTRATE ALIPUR

(24 Parganas)
Calcutta 11th June 1929

Trial No 10 of July 1929 1 x 3 Sd S N M. A S Judge 3-9 29

Your letter No 2 68 dated 24 5 29 advising one parcel per constable Mabhub Khan stated by you to have been despatched on the (nil) and which was received in this office on 25 5 1929

Mode in which parcel was found to be packet on receipt description of seal and weight

The parcel consisted of a small wooden case enclosed within a paper cover which was sealed with impressions of a seal corresponding with the seal impress on forwarded It contained a paper packet

Copy of label attached to parcel etc

Labelled as per copy below M/303/29 Scrappings of nails of one Dinabandhu Thakur sent from Alipore Court on 23 5 29 at 2 P M

Alipur
23-5 25

Sd Illegible
M O P C Hospital

Description of article contained in parcel

The paper packet contained a small quantity of scrapings of nails bearing faintly brownish stains

Result of Chemical Analysis

Regarding the origin of the stains on the scrapings of nails contained in the paper packet the original report No 16 0 S dated 8 6-29 from the Imperial Serologist is enclosed

The remnants of the exhibits will be returned to his messenger sent to this office with a letter of authority

Sd Hem Chandra Chakravarty
First Asstt Chemical Examiner to Govt of Be

No 1481 B

From

The Chemical Examiner to Government of Bengal

To

The Imperial Serologist Calcutta

Calcutta 30th May 1929

Sir

Enclosure one sealed packet Description of specimen Scrapings of nails (not tested) Please return the exhibit & the paper cover enclosing the exhibit

I have the honour to forward herewith a packet containing the marginally noted specimen soiled with blood received from the Subdivisional Magistrate Alipur (24 parganas) with his letter No 2768 dated the 24th May 1929 and charged under section 302 I P C

2 The presence of blood has not been proved by me in the exhibit and I have to request that you will inform me whether or not the blood if found was of human origin

3 The packet containing the specimen is duly sealed with this office seal

I have the honour to be Sir
Your most obedient servant
Sd. Hem Chandra Chakravarty M B
First Asstt Chemical Examiner to Government of Bengal

SEROLOGISTS REPORT

Form to be used by the Imperial Serologists when *reporting*

RESULTS OF ANALYSIS

No 1690 S

From

The Imperial Serologist and Chemical Examiner
To the Government of India.

To

The Chemical Examiner Calcutta

Calcutta 8th June 1929

Trial No 10 of July 1929 Ex 4 Sd. S M A S Judge 3-8 29

Your letter No 1481 dated 30-5 29 was received in this office on 31 5 29

Mode in which parcel was found to be packed on receipt and description of seal

It contained one packet enclosed within the cover sealed with impressions of your official seal It contained according to you scrapings of nails (blood not confirmed by you) herewith returned

with the paper over enclosing the exhibit received by you from the Subdivisional Magistrate, Alipur (24 parganas),

Results of analysis

The scrapings of nails noted overleaf are stained with human blood

Sd Illegible,
M A, M B, B Chir.
Imperial Serologist and Chemical Examiner
to the Government of India.

In Mofussil the inquest report is made in vernacular

The following is the translation of such inquest report —

Gholsapur Behala Case No 3 of 9 5 29 Sections 302 307, and 457 I P C
Bhutnath Shah No 83 Alipore Road
Nanigopal Shee Gholsapur
Rajani Kanta Jana
Atul Krishna Das
Hiralal Halder
Dasorathi Bandhopadhaya
Nanigopal Mukhopadhaya
Pada Mazumdar
Nibhushan Mukhopadhaya

Inquest report on the dead body of the deceased Kartik Ch Mukherji.

Having found the dead body of the deceased Kartic Chandra Mukherjee of Behala lying on a mat on a small wooden taktaposh in the South corner of the east facing hut of Rajbala Peshakar of Ghlshapur, at about 4 O clock to night in the presence of marginally noted witnesses I prepare inquest report as follows

The body clad in a white banian and in a fine red bordered dhoti and lying on its left side with head to the west, the whole body stained with blood, the blood flowing down from over the taktaposh, a pillow and a mat spread on the floor, an old umbrella with wooden handle—the pillow and mat stained with blood, a pair of shoes beside the mat—the shoes stained with blood, a blood stained copy of the Dainik Basumati newspaper towards the feet of the body. The body of the said deceased as identified by his brother Nani Gopal Mukherji and by his father, was, with the help of their neighbours Dasarathi Bandhopadhaya and Hiralall Halder brought outside, and examined 1 incised wound measuring about 4½ found on the back of the head above the neck 1 incised wound measuring left side of the dorsal region—the said two found to be gaping wounds, 1 gaping incised wound measuring 2 on the right elbow and 1 incised wound (gaping) measuring 3 or 3½ below the right elbow, 1 banian on the body and a slit in the part of the banian over the left side of the dorsal region the deceased aged about 24 years mark of excretion on the anus, 4 pice and 1 anna bit found in the fold of the cloth about the waist, eyes of the deceased half open The body was indentified by the marginally noted witnesses as that of Kartik Mukherji son of Phani Bhusan Mukherji of Behala The body is sent to Alipur morgue for post

mortem examination There was sacred thread round the neck of the deceased Fingers of both hands curved

When an officer in change of a police station on completion of an investigation finds the charge proved and proposes to proceed against any person, he shall notwithstanding that he has failed to arrest all or any of the persons against whom the charge is proved at once submit a charge sheet Thus a charge sheet shall be submitted when the accused is absconding or is sent up for trial in custody or on bond

The charge sheets shall be given an annual serial number The date fixed by the investigating officer for the trial of the case in Court shall be noted at the top The columns of the charge sheet shall be filled up as follows —

Column I—The name of the person on whose behalf the complaint was made shall be given if that person is different from the informant.

Column II—Names of persons arrested or not against whom sufficient evidence has not been obtained to warrant their conviction in Court shall be entered in this column If any such person was arrested it shall be noted if he was released on bond in order that the Magistrate may pass necessary orders as to his discharge

Columns III and IV—The date and hour of arrest and the name of the officer who made the arrest shall be given If the correct name or address has not been ascertained the investigating officer shall ask that a remand be applied for

Column V—The father s name of the absconder shall invariably be stated

Column VI—Property (including weapons) found with particulars of where, when and by whom found

Column VII—This column shall contain the name of witnesses whom the police propose to examine in Court and separately of persons who appear to be acquainted with the facts of the cases The witnesses shall be required to sign a bond to appear before the Magistrate on the date fixed for trial The bond so executed shall be attached to the charge-sheet, but bonds shall not be taken from house-search witnesses as they are specially exempted from attendance, unless summoned by a Magistrate

Column VIII—Police officers shall not give reasons for accepting charges in charge sheet forms but they shall state both the charge preferred by the complainant and the charge established after investigation

The date and hour of despatch of charge-sheet shall be noted at the bottom

In all cases in which no arrest is made (except as in charge-sheet cases) or in which there is insufficient evidence to send up the persons arrested for trial, or in which the charge is reported false the final report shall be submitted in the following form —

Final Report under section 173, Criminal Procedure Code.

District Final Report No Dated
Police station in First information No
Dated
(Vide Rule 176)

1	2	3	4	5	6	7	8
Name and address of complainant or informant.	Name c	Descrip	Name	If arrest	Date on recognizance	Property particulars of where when and by whom found and whether forwarded to Magistrate	Brief plaint action taken by police with result and reasons for not proceeding further with investigation

Despatched at $\frac{\text{A M}}{\text{P M}}$ on

Signature of Investigating Officer

When the Magistrate considers that the police have acted erroneously in not sending up an accused person for trial and that the evidence supports the charge he shall either order a fresh enquiry or direct the case to be sent up in charge sheet form for trial

When the Magistrate after receiving either an original report or the report after further enquiry in which the investigating officer still finds no reason to send up the accused determines that a charge sheet be submitted, he shall issue a formal warrant for the arrest of the accused

The accused after his arrest may confess his guilt.

Confession —If an accused or suspected person volunteers a confession, a police-officer will make use of it, as he should of every valuable clue obtained. But all officers are warned, first against working with the object of obtaining a confession, and secondly against relying unduly on confessions or admissions to prove cases in court.

S 164 Cr P C

Ss 24 to 31 Evidence Act

Anything which savours of oppression or trickery in obtaining a confession must be avoided The aim of a police officer should be to obtain circumstantial and oral evidence so convincing that the accused person cannot escape If he succeeds in obtaining such evidence, the confession will often follow and will materially strengthen the case, but to seek to obtain the confession first and the corroborative evidence afterwards is to reverse the proper order of proceedings If, however, a confession is volunteered in all inquiry, every effort must be made to ascertain if there is evidence corroborative of any point in the confession which can be verified. A statement purporting to be a confession will often be made in order to mislead the inquiring officer, and such statements are very rarely true in all particulars, and also are frequently made in order to throw blame on other persons, or with a view to deter from further inquiry Also they are generally retracted in court, in which case, if they stand alone and uncorroborated they have little or no probative value There is thus every reason for testing so called confessions very carefully and not accepting them as final and conclusive and stopping the inquiry

Every confession which a person in police custody wishes to make should be recorded by the highest Magistrate short of the District Magistrate who can be reached in a reasonable time

Confessions, unless recorded by Magistrates having jurisdiction in the case, should be recorded by (*a*) Sub divisional Magistrates (*b*) Stipendiary Magistrates of the first class or (*c*) by Stipendiary Magistrates of the second class if specially empowered by the District Magistrates

Investigating police officers should not be allowed to be present when a confession is recorded

The Magistrate should satisfy himself in every reasonable way that the confession is made voluntarily It should be made clear to the prisoner that the making of a statement or not is within his discretion. Cognizance of complaints of illtreatment by the police should be promptly taken and any indications of the use of improper pressure should be at once investigated

Confessions should ordinarily be recorded in open court and during court hours, provided that if the Magistrate is satisfied, for reasons to be recorded in writing on the form of confession that the recording of the confession in open court would be liable to defeat the ends of justice, the

confession may be recorded elsewhere. The immediate examination of an accused person directly the police bring him into court should be deprecated, and, when feasible, a few hours for reflection in circumstances in which he cannot be influenced by police should be given him before the statement is recorded

Verification of confession :—

In nearly all gang and other important cases, the evidence of an approver is necessary to prove the organisation and doings of the gang. If an accused person confesses and names his accomplices it is the duty of the investigating officer at once to produce him before a Magistrate with a view to having his confession recorded, and to consult the Superintendent of Police as to whether steps should not be taken to have the confession verified The Superintendent of Police, if he considers the case of sufficient complexity and importance to justify this procedure being adopted, will lay the fact before the District Magistrate to verify confession locally The verification should be made with a view to corroboration, and should begin from the place where the gang assembled and started. The informer should then be taken along the route, followed to the scenes of the different occurrences, and the principal incidents of each crime and its attendant events should be recorded in chronological order according to his dictation The note should be in the form of an itinerary, and should give all information on the points mentioned below which the informer is able to give but care should be taken that he does not supplement his statement with imaginary or only half remembered details —

(1) Name, father's name, residence, age and personal description of each accomplice

(2) The route taken by the gang

(3) The chief incidents during the journey of the gang from the starting point to the scene of occurrence, i e meetings with any one, visits to any shop or house for food, oil, light, axes etc, hiring carts or carriage, buying ticket at railway station, crossing a ferry etc

(4) The arrival of the gang at the scene of occurrence and the preliminary arrangements made, lighting torches, cutting sticks etc

(5) The commission of the crime, rooms entered doors broken, persons tied up or assaulted, cries uttered, or threats used, boxes taken chests broken open, property taken, etc.

(6) The sharing of the plunder

(7) The breaking-up of the gang and the homeward route taken etc

Should the person whom it is desired to use as an approver be undergoing substantive sentence of imprisonment in jail at the time he gives his information, it will be necessary, in order to allow the verification to take place, to move the local Government to suspend his senter temporarily, and as a condition of such suspension Government require him to remain in charge of the Subordinate Magistrate w

the District Magistrate may select for the purpose of verifying his confession

The advantage of having a confession verified consists in the fact that it is thereby made clear that the confession is a coherent story which has stood the test of careful examination on the spot by an impartial person Moreover it makes the evidence of the Magistrate available in case further proof is required of the confession The verification report of the Magistrate is not in itself admissible in evidence, but it may be used by the Magistrate to refresh his memory

During the local verification of a confession the Magistrate deputed to verify it shall be responsible for the safe custody of the prisoner and shall have sole charge of him but the latter shall on no account be put in a thana lock up No police officer of any rank shall have access to him except with the written permission of the verifying Magistrate and in his presence, and a record shall be kept of all such interviews permitted Ordinarily such permissions should not be given to any police officer directly connected with the investigation The prisoner shall be guarded by peons arranged for by the verifying Magistrate when such arrangements are considered to be sufficient to prevent the escape of or any attack on the prisoner When the custody of peons is considered insufficient, the verifying Magistrate should apply to the District Magistrate for a guard from the Armed Police Reserve, but the men of this guard shall be forbidden to hold any communication with the investigating police or to converse with the prisoner the personal wants of the prisoner being attended to by the Magistrates peons under the eyes of guard. The practice of verifying confessions should be carefully limited and should be confined to a verification of the facts which have been stated by the prisoner Cases have been brought to notice in which the so-called verifications have been used as a means of obtaining admissions to corroborate facts which have come to light after the confession has been made This practice should be discontinued, and a verification for the purpose of amplifying a confession shall not be allowed A verification of a confession should be entrusted to an experienced Magistrate who should accompany the accused to the places referred to by him and his proceedings should be restricted to verification and discovery of facts and local features which themselves either prove or disprove the truth of the statement The investigating police officer should not be present at the time of the verification, and only a sufficient police guard kept to prevent the prisoner from escaping

It should however, be understood that this will not stand in the way of a verifying Magistrate recording and testing any additional information which a confessing accused may volunteer to give, but it should be remembered that any statements made by the prisoner in the course of the verification cannot be used in Court as confessional statements,

and such statements are no part of the verification of the confession. A separate memorandum should accordingly be kept of any such additional statement The memoranda and the notes made by the Magistrates regarding any inquiry made in connection with it will not be evidence, but the fact that facts which might be given in evidence were brought to light for the first time and discovered by the Magistrate as a result of information there obtained might often be of great importance.

It is desirable to indicate some of the safe-guards which should be adopted against malpractices and the acceptance of the confessions improperly obtained.

(1) Where at any place or station there are present more Magistrates than one, confessions should in general be recorded by the Magistrate specially selected for this purpose by the District Magistrate, or failing such selection, by the Magistrate senior in rank or class

(2) During the examination of the accused and the record of his statement, unless in the opinion of the Magistrate the safe custody of the prisoner cannot otherwise be secured, police officers should not be present. In particular, the police officers concerned in the investigation of the case or in the arrest or production of the accused should be excluded.

(3) When the accused is produced the Magistrate should ascertain when and where the alleged offence was committed and by questioning the accused should further ascertain when and where the accused was first placed under police observation control or arrest

(4) The Magistrate should next question the accused in order to ascertain whether he is about to speak voluntarily It should be made clear to the prisoner that he is free to speak or to refrain from speaking as he pleases, and he should be warned that if he chooses to speak, anything he says will be used in evidence against him

(5) When, upon questioning the prisoner and from observation of demeanour, the Magistrate has reason to believe that the prisoner is speaking or is about to speak voluntarily he shall then proceed to record his statement While carefully avoiding anything in the nature of cross-examinations the Magistrate shall endeavour to record his statement in the fullest detail and to this end may properly put such questions as may be necessary to enable the prisoner state all that he desires to state and to enable the Magistrate clearly to understand his meaning

Bail —

When the lawyer is engaged for an accused person, the first thing is to see that the client is out on bail It is indisputable that bail is not to be withheld merely as a punishment The requirements as to bail are to secure the attendance of the accused at the trial *R v Rose*, (1198) 18 Cox 717. The proper test to be applied in the solution of the question, whether bail should be granted or refused, is whether it is probable that

the party will appear to take his trial *Re Robinson* (1854) 23 L J Q B 286, *R v S Caife* (1841) 9 Dowl P C 553 The test is applied by reference to the following considerations —

(*a*) The nature of the accusation, *R v Barronet* (1853) 1 E & B 1, *R v Butler* (1881) 14 Cox 530

(*b*) The nature of the evidence in support of the accusation · *Re Robison* (1854) 23 L J Q B 286, *R v Butler* (1881) 14 Cox 530, *R v Mc Cormic* (1864) 17 Ir C L R 411

(*c*) The severity of the punishment which conviction will entail *Re Robinson* (1854) 23 L J Q B 286, and this explains the reluctance of courts to grant bail on charges of murder *Re Barthelemy* (1852) 1 E & B *R v Andrews* 13 L J M C 113

In this connection it may be recalled that in England bail in treason or felony is discretionary in the High Courts or Courts having jurisdiction to try the offence *R v Mc Cartie* (1859) 11 Ir C L R 188, *R v Platt* (1777) 1 Leach 157 on the other hand bail in misdemeanor is said to be of right at common law *R v Spilsbery* (1898) 2 Q B 615, *R v Badjar* (1843) 4 Q B 468 *Re Frost* (1888) 4 T L R 757 See also *R v Cornee* (1829) 4 C & P 251 *R v Beardmore* (1836) 7 C & P 297, *R v Osborne* (1837) 7 C & P 799, *King v Fortier* (1902) 13 Quebec K B 251 The distinction is reflected in Secs 496 and 497 of the criminal Procedure Code which treat respectively of the grant of bail in cases of what are described in the phraseology of the Indian Legislature as bailable and non bailable offences The substance of the matter is that the discretionary power of the Court to admit to bail is not arbitrary, but is judicial, (see 6 Mad 63) and is governed by established principles The object of the detention of the accused being to secure his appearance to abide the sentence of law, the principle enquiry is whether a recognisance would effect that an end In seeking answer to this enquiry, Courts have considered the seriousness of the charges the nature of the evidence, the severity of the punishment prescribed for the offence, and in some instances the character means and standing of the accused, See *R v Bennet* (1907) 49 L T 387, *R v Atkins* (1907) 49 L T 421 *R v Manning* (1888) 4 T L R 139, *R v Wood* (1845) 9 Ir L R 71 *R v Gallagher* (1855) 7 W C L 19, *R v Standard* (1900) 4 Canada Cr Cas 131 Section 497 of Criminal Procedure Code leaves ample room for exercise of discretion on these lines, and the view expressed by Mitra J in 10 C W N 1093 and 35 Cal 174 is the right view The section 497 has been materially altered by section 135 of Act XVIII of 1923 which substitutes the words 'an offence punishable with death or transportation for life' for the words the offence of which he is accused' This cannot but be regarded as the result of a liberalising influence on the policy of the Legislature and the discretion of the courts is less fettered than before See 18 C L J. 88 See also 116 I C 561

Security for keeping the peace and for good behaviour—

The law on this subject has been dealt with in sections 106 to 109 of the Code of Criminal Procedure

Sec 106 deals with security for keeping the peace on conviction

Sec 107 deals with security for keeping the peace in other cases

Sec 108 deals with security for good behaviour from persons disseminating seditious matter

Sec 109 deals with security for good behaviour from vagrants and suspected persons

If a Magistrate thinks that it is necessary to require any person to shew cause under the above sections he shall make an order in writing setting forth the substance of the information received, the amount of the bond to be executed the term for which it is to be in force and the number character and class of sureties (if any) required

If the person against whom the order is made is present in Court it shall be read over to him If not present in Court a summons or warrant will be issued requiring him to appear before such Magistrate When the accused appears the Magistrate shall inquire into the truth of the information If upon such inquiry it is proved that it is necessary for keeping the peace or maintaining good behaviour as the case may be that the person in respect of whom the injury is made should execute a bond with or without sureties the Magistrate will make an order accordingly

S 106 of the Code of Criminal Procedure applies only at the time of passing sentence on an accused person 24 W R Cr 10 The breach of peace does not necessarily mean breach of public peace A I R 1933 All 609

The inquiry by the Magistrate shall be made as nearly as may be practicable where the order requires security for keeping the peace in the manner prescribed for conducting trials and recording evidence in summons cases and where the order requires security for good behaviour in the manner prescribed for conducting trials and recording evidence in warrant cases except that no charge is framed

With reference to S 108 of the Code of Criminal Procedure the case reported in 30 C W N 953 is an important one In this case it has been held that the appellant who was the editor of a newspaper called the Forward published therein an article headed Yellow Urdu Leaflet Attempts at Incitement Will Mahomedan Leaders intervene? in which he animadverted on a pamphlet in Urdu circulated for the benefit of Mahomedans In the body of the article an English translation of the pamphlet was printed as also a transliteration in English letters of the original Urdu and it was observed that the pamphlet was being circulated and it was not difficult to trace the source from which it emanated The editor added Let us wait and see what steps the guardians of law and order take in the matter For this the editor was proceeded against under

Sec 108 Cr P C and ordered to enter into his own recognizance in the sum of Rs 500 to be of good behaviour The utmost that is warranted on any view of Sec 108 of the Code of Criminal Procedure is that a person comes within its scope if he disseminates matter which reveals an intention to promote feelings of enmity between classes Where there is no such intention the mere publication of news which is of such a character that it is possible to suppose that some people reading it may momentarily or foolishly be induced to entertain unreasonable feelings towards a class of other people is not enough to bring it within the mischief of Sec 108 Cr P C *It is not for the Criminal Courts to abandon "intention" the ancient* and statutory test and to put in peril of their process persons of innocent intention If the Legislature meant to say that a Magistrate could proceed under Sec. 108 Cr P C against any person who was found to have disseminated matter which in the opinion of the Magistrate has a tendency to promote class hatred it would have said this very plainly in terms very different from those which it has employed If the person proceeded against under Sec 108 of the Code of Criminal Procedure is innocent under Sec 153A I P C he does not come under the former section as a person disseminating matter, the publication of which is punishable under Sec 153A I P C Sec 108 Cr P C seems to assume that one has only to look at the matter to tell whether its publication is punishable or not This is broadly true no doubt but it is not the truth and it ill consists with Sec 153A I P C *under which no matter is set aside or classified* except with reference to the intention of the particular accused person The internal evidence of the word used and the meaning of the words used will very generally be decisive of the question whether or not the Court is confronted with a successful or unsuccessful attempt to promote feelings of enmity They will be decisive in all cases where the intention is expressly declared also if the words used naturally clearly and indubitably have such a tendency then it must be presumed that the publisher intended that which is the natural result of the words used But the words used and their true meaning are never more than evidence of intention and it is the real intention of the accused that is the test Whether or not the promoting of enmity is the intention is to be collected in most cases from the internal evidence of the words themselves but other evidence can also be looked at.

Persons against whom proceedings are taken under S 107 are entitled to bail as of right 31 Cr L J 1195

Bad livelihood case —

S 110 of the Code of Criminal Procedure deals with security for good behaviour from habitual offenders

When Magistrate acting under the S 110 deems it necessary to require any person to show cause under such section he shall make an order in writing setting forth the substance of the information received the amount

of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required

If the person against whom the order is made, is present in Court it shall be made over to him

If not present in court a summons or warrant will be issued requiring him to appear before such magistrate When the accused appears, the Magistrate shall inquire into the truth of the information If upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond with or without sureties, the Magistrate shall make an order accordingly

With reference to Bad livelihood cases there is no difference between the powers of the Presidency Magistrates and the Moffussil Magistrates In the case reported in 20 C W N 725 it was held that Presidency Magistrates are not absolved from the ordinary rules of evidence in taking proof of previous convictions Whenever it is required to prove a previous conviction against a man, whether it be for the purpose of enhancement of punishment under Sec 75 I P C, or in proceedings under Chapter VIII of the Criminal Procedure Code, such previous conviction must be proved strictly and in accordance with law Unless they are so proved no Court whether it be that of a Presidency Magistrate or not can properly take such previous convictions into consideration against an accused person Before the Magistrate previous convictions of one of the accused were sought to be proved by two witnesses one of whom was a certified expert in finger prints and who produced a register from the Central Bureau containing the thumb impression of the accused and his descriptive roll and a list of his previous convictions The other witness was a clerk in the prison at Bombay who produced an extract from the jail register showing previous convictions of a man who was certified therein to be the same man as the accused and certified copies of previous convictions of the same man This witness was asked by the Magistrate to examine the accused and see if he bore the marks attributed to the convict in Bombay and he expressed his opinion that he did The previous convictions were not properly proved. Accused persons should be given some chance of reforming their characters and they should not be proceeded against under Sec 110 Cr P C soon after they have emerged from jail Against some accused there are no definite acts of picking pockets alleged certainly nothing which would point to his having committed that offence on any particular occasion or with regard to any particular individual The evidence against them is as general and consequently as vague and as weak as that against others There might be grounds for suspecting that the ac persons are members of a gang but having regard to the way in the evidence against them has been recorded and the general record the order under Sec 118 Cr P C cannot be confirmed

The recent English case of *Rex v Norman* (English Weekly Notes (1924) page 199 is highly instructive In that case the appellant pleads guilty to counts in an indictment charging him with burglary stealing and receiving and uttering a forged cheque He was also charged with being a habitual criminal The statutory notice served upon him was based primarily upon Sec 10 Sub sec 2 (*b*) of the Prevention of Crime Act 1908 and stated that on September 6 1917 he was found by a jury to be a habitual criminal and was then sentenced to six years' preventive detention The notice added that evidence might also be given of a long series of previous convictions against him which were set out in the notice At the trial upon proof being given that the appellant had already been found to be, and had been sentenced as a habitual criminal he was informed by the Court that evidence on his part was 'of no avail and jury was directed that it was compelled to find that he then was a habitual criminal He was found by the jury to be a habitual criminal and was sentenced to 3 years penal servitude and 5 years preventive detention

The appellant appealed against the finding that he was a habitual criminal and against the sentence of preventive detention

The Prevention of Crime Act 1908 S 10 sub Sec 1 — Where a person is convicted on indictment of a crime committed after the passing of this Act and subsequently the offender admits that he is or is found by the jury to be a habitual criminal and the Court passes a sentence of penal servitude the Court if of opinion that by reason of his criminal habits and mode of life it is expedient for the protection of the public that the offender should be kept in detention for a lengthened period of years may pass a further sentence ordering that on the determination of the sentence of penal servitude he be detained for such period not exceeding ten nor less than 5 years as the Court may determine and such detention is hereinafter referred to as preventive detention ' Sub sec 2 A person shall not be found to be a habitual criminal unless the jury finds on evidence (a) that since the attaining the age of 16 years he has at least 3 times previously to the conviction of the crime charged in the said indictment been convicted of a crime whether any such previous conviction was before or after the passing of this Act and that he is leading persistently a dishonest or criminal life or (b) that he has on such a previous conviction been found to be a habitual criminal and sentenced to preventive detention.

It was held that the contention on behalf of the Crown—that where the notice served upon the prisoner contains the statement set out in S 10, Sub sec 2 (b) of the Prevention of Crime Act 1908 the only question was of identity of the prisoner with the person previously found to be a habitual criminal and sentenced to preventive detention and that question was answered in the affirmative no other question arose and no other evidence was admissible and that the jury were bound to find the prisoner to be at

the time when the verdict was given a habitual criminal—was not correct The words in Sec 10 Sub sec 2 — shall not be found unless' ought not to be construed—as meaning ' shall be found if as the prosecution contended. Further S 10 Sub sec 2 (a) and (b) did not contain a complete and exhaustive definition of a habitual criminal Whether the notice served on a prisoner was framed under para (a) or under para (b) of Sec 10, sub sec 2 of the Act of 1908 in either case it was a question of fact for the jury to say whether or not the prisoner was still a habitual criminal and the prisoner was entitled to call evidence to show that he was not at that time habitual criminal The Jury might find the prisoner was not a habitual criminal even though the prosecution proved the propositions in paras (*a*) or (*b*) of Sec 10 sub sec 2 but before the Jury could find the prisoner to be a habitual criminal one or other of the two conditions precedent must have been satisfied In the present case the direction given to the Jury was too unfavourable to the appellant and he was prevented from giving evidence on his own behalf The appeal would therefore be allowed

The case of *Rex* v *Stanley* (1920) 2 K B was overruled

The question whether a particular person who is offered as a surety is or is not fit within the meaning of Sec 122 Cr P C must be decided by the Magistrate himself and his decision must be based upon evidence taken for the purpose sureties offered should not be refused except after judicial inquiry Sureties should not be rejected merely if they do not show that they have sufficient control over the accused That is not a valid ground for rejection of a surety 20 C W N 1133 The mere fact that there may be some reason to suppose that the accused had committed some substantive offence under the Penal Code is no obstacle for the institution of proceedings under Sec 110 of the Cr P C (1930) A L J 389 See also (1933) A L J 7""

Unlawful Assembly —

The Chapter IX of the Code of Criminal Procedure deals with unlawful assemblies It consists of sections 127 to 132

Section 127 provides for dispersing of assemblies on command of Magistrate or police officer

Section 128 provides that civil force may be used for dispersing of such assemblies

Section 129 provides for the use of military force

Section 130 provides the duty of officer commanding of troops required by Magistrate to disperse such assemblies

Section 131 empowers commissioned military officers to disperse such assemblies

Section 132 is the protection clause against prosecution for act done under Chapter IX

Public Nuisances — A District Magistrate, a Sub divisional Magistrate

or a Magistrate of the first class, on receiving a police report or other information and on taking such evidence (if any) as he thinks fit may make a conditional order for removal of public nuisances The order shall, if practicable, be served on the person against whom it is made.

The person against whom such order is made shall (a) perform, within the time and in the manner specified in the order, the act directed thereby, or appear in accordance with such order and either show cause against the same, or apply to the magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper

The consequence of his failing to do that is his prosecution under S 188 I P C

If he appears and shows cause against the order, the Magistrate shall take evidence in the matter as in the summons case If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case If the Magistrate is not so satisfied, the order shall be made absolute

On receiving an application for the appointment of a jury, the Magistrate shall forthwith appoint a jury consisting of an uneven number of persons not less than five of whom the foreman and one half of the remaining numbers shall be nominated by such Magistrate, and the other member by the applicant.

If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made of subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute subject to such modification (if any)

Temporary orders in urgent cases of nuisance or apprehended danger — A District Magistrate a Chief Presidency Magistrate a Sub divisional Magistrate or any other Magistrate, specially empowered by the Local Government has power to issue order absolute at once in urgent cases of nuisance or apprehended danger

Disputes as to immoveable property —Whenever a District Magistrate, Sub divisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof within the local limits of his jurisdiction, he shall make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend the Court in person or by pleader, within a time to be fixed by Magistrate and to put in written statement of their respective claims as respects the fact of actual possession of the subject of dispute The Magistrate shall thereafter, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence take such further evidence (if any)

as he thinks necessary and if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject

Then the Magistrate shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction

The more essential points which should be borne in mind by Magistrates when called upon to take action under Sec 145 of the Code of Criminal procedure were indicated in the Calcutta High Court's General Letter no 3 of $\frac{\text{18th August}}{\text{29th November}}$ 1909 the major portions of which are reproduced below —

It should be impressed upon Magistrates that the whole object of and only excuse for proceedings under Sec 145 is the prevention of a breach of the peace supposed to be imminent and that the procedure to be followed in disposing of such cases is that laid down in Sec 145 (4) of the Code which must be strictly observed It should be the primary aim of the inquiry officer, therefore to arrive at his decision with the utmost promptitude consistent with an adequate investigation into the dispute before him and he should be specially careful not to permit the proceedings to assume the complexion of a Civil suit or in any way to countenance an endeavour on the part of either party to secure any advantage for the purpose of Civil litigation

Other essential points to be kept in mind in connection with proceedings under this section are as follows —

(a) The Magistrate should in his order which must be in writing declare himself satisfied from a proper report or other information and for reasons given that a dispute exists concerning land within the local limits of his jurisdiction and that the dispute is one likely to cause a breach of peace

(b) When land is in dispute the boundaries shall be duly defined in the order and care should be taken to include nothing beyond the subject of the dispute

(c) the order should proceed to require the parties concerned in the dispute to attend the Magistrate's Court in person or by pleader on a certain date to file written statement of their respective claims as regards the fact of actual possession and to be prepared with their oral and documentary evidence there and then

(d) the date should be so fixed as to allow reasonable time for the due service and return of the notice promulgating the order and the production of evidence

(e) a copy of the order should be published affixed at or near the subject of the dispute ,

(*f*) the forms prescribed in Schedule V to the Code of Criminal Procedure should be used such modifications being made therein as the circumstances of the case may require ,

If the attention be paid to those preliminaries the trying Magistrate should be in a position to insist upon the taking up of the case on the date fixed for hearing and it should not be necessary to grant adjournment after adjournment simply because the parties are not given due notice of the proceedings or by reason of the proceedings themselves being inaccurate or incomplete Once the case is commenced the hearing should be continued *de die in diem* until the Magistrate is in a position to arrive at a decision but in doing so he must remember that sole object of his inquiry is to determine if possible the fact of actual possession and that even in the case of an exparte proceeding there must be some recorded evidence to justify the order passed by him

Dispute concerning rights of use of immoveable property

Whenever any District Magistrate Subdivisional Magistrate or *Magistrate of the first class is satisfied from a police-report or* other information that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water (whether such right be claimed as an easement or otherwise) within the local limits of his jurisdiction he may make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend the Court in person or by pleader within a time to be fixed by such Magistrate and to put in written statements to their respective claims and shall thereafter inquire into the matter and the provisions of that section shall as far as may be, be applicable in the case of such inquiry If it appears to such Magistrate that such right exists he may make an order prohibiting any interference with the exercise of such right Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercisd within three months next before the institution of the inquiry or where the right is exercisable only at particular seasons or on particular occasions *unless the right has been exercised during the last of such seasons* or on the last of such occasions before such institution If it appears to such Magistrate that such right does not exist he may make an order prohibiting any exercise of the alleged right This order shall be subject to any subsequent decision of a civil court of competent jurisdiction

Sanction cases—There were two classes of Sanction cases *viz* under Sec 195 and under Sec 476 Cr P C but the amending Act of 1923 has abolished sanction being granted to private persons for prosecuting the delinquent The provisions of section 195 caused constant and great difficulty, and various amendments were suggested There is no doubt that it was not possible to remedy the evils which were connected with the sections so long as private individuals were allowed to prosecute for offences

connected with the administration of justice. In that view of the matter, the only effective way of dealing with the section was to allow prosecutions to be launched only by the public servant or by the Court. There is no reason why the public servant or the Court should not file a complaint exactly in the same way as a private individual would do in other cases and the amendment of this section and the enlargement of section 476 involve the adoption of this principle. Section 195 bars the cognizance by any Court of offences of this nature except upon such complaint, while the procedure to be followed when the Court desires to prosecute has been prescribed by section 476. The adoption of this principle has at all events got rid of the objectionable practice of keeping a sanction, which has been granted to a private individual, hanging over the head of the accused person for a period of six months, which is frequently utilised for the various purposes of blackmail. In the case of a complaint by a Court or a public servant the limit of time has not been prescribed. Accordingly, the term sanction has been got rid of. One of the most weighty changes introduced by the amending Act is in respect of prosecutions for offences committed before or in relation to proceedings of the courts. A glance of any commentary on the Code before amendment gave indication of the difficulties that arose in putting sections 195 and 476 into operation. After a long and careful thought the Legislature decided on a line of action which was met with general approval. The two sections as they stood (under the old Code) provided an alternative procedure for the Courts in dealing with them. Sanction was given to proceedings under section 195 or action was directed by the Courts under section 476. The provisions relating to the sanction proceedings have now been repealed and the two sections now supplement each other. Section 195 contains the prohibition of prosecution except upon complaint by the Court; Section 476 lays down the procedure to be allowed. The changes made by the Amending Act are therefore of much importance.

Inquiry into cases triable by Court of Sessions or High Court **Sessions cases.** **High Court Sessions cases**	—These subjects have been dealt with in the next Chapter.

Trial of summons cases

When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted.

If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him; and, if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly.

If the magistrate does not convict the accused or, if the accused does not make such admission, the Magistrate shall proceed to hear the complainant.

If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned the complainant does not appear, the Magistrate shall notwithstanding anything hereinbefore contained, acquit the accused unless for some reason he thinks proper to adjourn the hearing of the case to some other day. The complainant will be first examined in-chief by the Prosecution.

The following rules shall be remembered in examining in chief a witness —

(a) no question suggesting the answer should be asked while examining in chief a witness.

(b) Two or more questions should never be mixed up together so that the answer to one might be taken for both or all.

(c) With regard to the bold witnesses they must be checked by ceremonious observation of manners on the part of the lawyer.

(d) With regard to the timid witnesses they should be encouraged by asking familiar questions and then coming to the points step by step. Put questions in a language as simple as possible.

(e) If one's own witness is adverse exhibit no want of composure. If you can prove his hostile attitude declare him hostile witness.

(f) Do not bring any witness who is biased against you. Unless you are very sure, do not examine any witness from enemy's camp.

(g) Never ask a question without an object, nor without being able to connect that object with the case.

(h) Never put any question in an objectionable form.

(i) Do not object to any question unless you are sure of enforcing that objection.

After the examination in chief of the complainant, he will be cross-examined by the defence lawyer.

The following rules shall be remembered in cross examining a witness —

(a) Put your best point first. If you find any weak spot in witness's examination in chief go direct to that point.

(b) Try to ascertain how far he has personal knowledge and how far he has hearsay knowledge.

(c) Begin with matters remotely connected with the fact in issue and approach the subject by slow stages.

(d) Test memory by questioning the events of the witness's life.

(e) Never ask any question which goes against your client.

(f) Stop with victory. Last question must have a favourable answer.

(g) Any police officer making an investigation may examine orally any

person supposed to be acquainted with the facts and circumstances of the case. The police officer generally reduces in writing such statement. When any witness is called for the prosecution in such inquiry or trial whose statement has been reduced in writing the Court shall on the request of the accused refer to such writing and direct that the accused be furnished with a copy thereof, in order that any part of such statement if duly proved, may be used to contradict such witness

The complainant will then be re examined by the prosecution to explain matters referred to in cross examination and if new matter is by permission of the Court, introduced in re examination, the adverse party may further cross examine upon that matter

After hearing the complaint the magistrate shall take all such evidence as may be produced in support of the prosecution

The Magistrate after recording prosecution evidence shall hear the accused and take all such evidence as he produces in his defence

The Magistrate may, if he thinks, fit, on the application of the complainant or accused issue a summons to any witness directing him to attend or to produce any document or other thing

The Magistrate may before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial, be deposited in Court

If the Magistrate upon taking evidence and examining the accused finds the accused not guilty he shall record an order of acquittal

A Magistrate may convict the accused of any offence which from the facts admitted or proved he appears to have committed whatever may be the nature of the complaint

Trial of Warrant cases —

When the accused appears or is brought before a Magistrate such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the Prosecution

If upon taking such evidence and making such examination (if any) of the accused as the Magistrate thinks necessary he finds that no case against the accused has been made out which if unrebutted would warrant his conviction the Magistrate shall discharge him

If when such evidence and examinations have been taken and made, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence, which such magistrate is competent to try and which in his opinion, could be adequately punished by him he shall frame in writing a charge against the accused

The charge shall then be read, explained to the accused and he shall be asked whether he is guilty or has any defence to make

If the accused pleads guilty, the Magistrate shall record the plea and may in his discretion convict him thereon

If the accused refuses to plead or does not plead or claims to be tried he shall be required to state at the commencement of the next hearing of the case or if the Magistrate for reasons to be recorded in writing so thinks fit forthwith whether he wishes to cross examine any and if so which of the witnesses for the prosecution whose evidence has been taken, if he says he does so wish the witnesses named by him shall be recalled and after cross examination and re-examination (if any) they shall be discharged The evidence of the remaining witnesses for the prosecution shall next be taken and after cross examination and re examination (if any) they also shall be discharged The accused shall then be called upon to enter upon his defence and produce his evidence

If the accused after he has entered upon his defence applies to the magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross examination, or the production of any document or other thing the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexatious delay or for defeating the ends of justice Such ground shall be recorded by him in writing

Provided that when the accused has cross examined or had the opportunity of cross examining any witness after the charge is framed the *attendance of such witness shall not be compelled* unless the Magistrate is satisfied that it is necessary for the purposes of justice

When the proceedings have been instituted upon complaint and upon any day fixed for the hearing of the case the complainant is absent and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may in his discretion discharge the accused

If in any case in which a charge has been framed the Magistrate finds the accused not guilty he shall record an order of acquittal Where in any case the Magistrate finds the accused guilty, he shall pass sentence upon him according to law

Summary trials —

The procedure prescribed for summons cases shall be followed in summons cases and the procedure prescribed for warrant cases shall be followed in warrant cases See 16 C W N 696

No sentence of imprisonment for a time exceeding three months shall be passed in the case of any conviction after summary trials

In cases where no appeal lies the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge but he or they shall enter in the form containing the following heads —

(a) *the serial number*,
(b) the date of the commission of the offence,
(c) the date of the Report or complaint,
(d) the name of the complainant (if any),
(e) the name, parentage and residence of the accused,

(f) the offence complained of and offence (if any) proved, and the value of the property in respect of which the offence has been committed,

(g) the plea of the accused and his examination (if any),

(h) the finding and, in the case of a conviction a brief statement of the reasons therefor,

(i) the sentence or other final order, and

(j) the date on which the proceeding terminated

In cases where appeal lies the Magistrate shall record a judgment embodying the substance of evidence and also the above particulars

When an accused is charged with offences one of which is triable summarily and the other not so triable it is not open to a Magistrate to discard the latter charge and to try the case summarily 11 Cal 230

Contempt Cases —

When any such offence as is described in Section 175 Section 178, Section 179, Section 180 or Section 228 of the Indian Penal Code is committed in the view or presence of any Civil Criminal and Revenue Court, the court may cause the offender to be detained in custody and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees and in default of payment, to simple imprisonment for a term which may extend to one month unless such fine be sooner paid

Regarding High Court's power to punish for contempts of Subordinate Court See Act XII of 1926

In the case reported in 23 C W N 389 it has been held that the petitioner was the plaintiff in a suit in the Court of Small Causes which was decreed, later the Munsiff on the defendant's application for retrial or review issued a notice on the petitioner directing him to appear in Court with certain account books on a specified date and give his deposition, failing which the suit was to be decided against him the petitioner did not appear as directed and the Munsiff called upon him to show cause why he should not be fined for disobedience cause was shown by a petition but there was no appearance and the petitioner was fined for contempt of Court the order was held to be without jurisdiction Sec 151 Cr P C does not give the Court an absolute discretion to make any order it pleases It does not certainly confer upon any Court a summary jurisdiction which it does not otherwise possess to punish contempts by fine or imprisonment In this case there was contempt committed in the view and presence of the Court See *In re Rasik Lal Nag* I L R 44 Cal 648 In a recent Full Bench case of the Amrita Bazar Patrika their Lordships of the Calcutta High Court sentenced the Editor to 3 months and to the printer and publisher 1 month for publishing a paragraph in their daily paper insinuating against the Judges of the High Court

(4) Against conviction by Assistant Sessions Judge when he passes any sentence of imprisonment for a term exceeding four years or any sentence of transportation

(5) Against conviction by a Magistrate specially empowered under Sec 30 C P C when he passes any sentence or imprisonment for a term exceeding four years or any sentence of transportation

(6) Against conviction by a Magistrate of an offence under Sec 124 A I P C

(7) Against conviction on a trial by Sessions Judge or Additional Sessions Junge provided he passes a sentence of imprisonment exceeding one month or a sentence of fine exceeding fifty rupees There is no appeal from a sentence of imprisonment in default of payment of fine when no substance of imprisonment has also been passed

(8) Against conviction by a Presidency Magistrate if he passes a sentence of imprisonment for a term exceeding six months or a *fine exceeding two hundred rupees* See 16 Cal 799

(9) Against an original or appellate order of acquittal if prescribed under the Local Government the High Court has jurisdiction under Sec 439 Cr P C to interfere in revision with an acquital but it should ordinarily exercise their power sparingly? 19 C W N 181

(10) Against the orders of Sessions Judge or additional Sessions Judge under Sec 416 A Cr P C refusing to making a complaint against any person

II Appeal to Court of Session —

(1) Against an order of the first class Magistrate rejecting the application under Sec 89 Cr P C for the delivery of property or the proceeds of sale thereof

(2) Against an order made by any Magistrate other than Presidency Magistrate under section 118 Cr P C to give security for keeping the peace or for good behaviour Provided that the District Magistrate of the District is not empowered by Local Government to hear such appeals Provided further that the proceedings in question are not laid before the Sessions Judge under Sec 123 Cr P C

(3) Against an order of the District Magistrate refusing to accept or rejecting a surety under Sec 122 Cr P C

(4) Against the conviction by Assistant Sessions Judge if he passes a sentence of imprisonment for a term not exceeding four years or does not pass a sentence of transportation

(5) Against the conviction by a Magistrate specially empowered under section 30 Cr P C if he passes a sentence of imprisonment

for a term not exceeding four years or does not pass a sentence of transportation

(6) Against the conviction by a District Magistrate or a Magistrate of the first class not empowered under Sec 30 Cr P C provided the respective Magistrate passes a sentence of imprisonment exceeding one month or fine exceeding fifty rupees There is no appeal from a sentence of imprisonment passed by such Magistrate in default or payment of fine when no substantive sentence of imprisonment has also been passed

(7) Against the orders of the assistant Sessions Judge District Magistrate or Magistrate of the first class under Sec 476 or Sec 476A Cr P C refusing to make a complaint or making complaint against any person

III **Appeal to District Magistrate** —

(1) Against an order of the Magistrate of the second and third class under Sec 89 for the delivery of property or the proceeds of sale thereof

(2) Against an order under Sec 118 Cr P C to give security for keeping the peace or for good behaviour provided that the Local Government has directed by notification in the local official Gazette that such appeals shall lie to the District Magistrate Provided further that the proceedings are not laid before a Sessions Judge in accordance with the provisions of Sub-sections (1) or Sub section (3 A) of Section 123 Cr P C

(3) Against an order refusing to accept or rejecting a surety under Section 122 Cr P C made by a magistrate other than the District Magistrate

(4) Against the convictions on a trial held by any Magistrate of the second or third class Provided that if the second class Magistrate be a Sub divisional Magistrate the appeal shall lie against the sentence passed under Sec 349 or Sec 380 Cr P C

(5) Against the orders of the second or third class Magistrates under Sec 476 or 476A Cr P C refusing to make or making a complaint against any person

The following should be borne in mind in connection with criminal appeals —

(1) There shall be no appeal when the accused pleads guilty

(2) There shall be no appeal by a convicted person in any case tried summarily in which a Magistrate is empowered under Sec 260 and passes a sentence of fine not exceeding two hundred rupees only

(3) An appeal may be filed when any two or more of the punishments are combined but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is

ordered to find security to keep the peace But a sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined

(4) When more persons than one are convicted in one trial and an appealable judgment or order has been passed in respect of any such persons all or any of the persons so convicted at such trial shall have a right of appeal

(5) An appeal may lie on a matter of fact as well as a matter of law except where the trial was by jury in which case the appeal shall lie as a matter of law only Provided that in the case of an accused sentenced to death he may appeal on a matter of fact as well as a matter of law

(6) Every appeal shall be made in the form of a petition in writing (vide Book on Pleadings) in writing presented by the appellant or his pleader and every such petition shall (unless the court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against and in cases tried by a jury a copy of the heads of charge

Revision —

Although the High Court, the Sessions Judge the District Magistrate and the Sub divisional Magistrate empowered by the Local Government in this behalf have concurrent powers to call for and examine the record of any proceeding before any inferior Crimial Court, the High Court alone can revise the orders of such inferior Criminal Court The sessions Judge or District Magistrate may report for orders of the High Court the result of such examination except that the Sessions Judge and the District Magistrate are authorised to make an order for further inquiry into any complaint which has been dismissed under Sec 203 or Sub sect on 3 of Section 204 or into the case of any person accused of an offence who has been discharged The High Court can be moved direct without moving Sessions Judge or the District Magistrate—See 36 Cal 643

Applications for revision in criminal cases stand on a fundamentally different footing from appeals against appellate decrees in Civil suits In cases of the latter description, the Court is bound by the rigid provisions of Sec 100 of the Code of Civil Procedure 1908 to accept findings of fact embodied in the judgment of the lower Appellate Court. In criminal cases on the other hand there is no such statutory restriction to the exercise of the jurisdiction of the Court It is not disputed that, as a matter of practice the Court does not ordinarily interfere with the conclusions of the lower Appellate Court on questions of fact 12 B L R, 249 But although it is unusual in revision to interfere with a finding of fact, there can be no question as to the competency of the High Court so to interfere with a finding of fact when the occasion requires it, and the Court will not hesitate to do so when satisfied that the finding is manifestly erroneous and a

miscarriage of justice would result from it if left uncorrected 5 Bom L R 1069 In this connection reference may be made to the exposition of the law on the subject by Sir Lawrence Jenkins in 28 Bom 538 'If we have been entrusted with the responsibility of a wide discretion we should be the last to attempt to fetter that discretion and whenever it is agreed that judicial decision has deprived us of the power that the Legislature has given us, I recall the words of an eminent English Judge—'I desire to repeat' he said what I have said before that this controlling power of the Court is a discretionary power and it must be exercised with regard to all the circumstances of each particular case anxious attention being given to the said circumstances which vary greatly For myself I say emphatically that discretion ought not to be crystallised as it would become in course of time by one Judge attempting to prescribe definite rules with a view to bind other Judges in the exercise of the discretion which the Legislature has committed to them This discretion like all other judicial discretion ought, as far as practicable, to be untrammelled and free so as to be fairly exercised according to exigencies of each case These weighty words appear to me to breathe the spirit that should guide us in the exercise of our own discretionary powers of revision This may perhaps increase our responsibilities and add to our labours but no one would shirk the one or grudge the other In view of the unfettered and unrestricted jurisdiction of the High Court in cases for revision one cannot apply to such cases rules and principles, rightly recognised in appeals from appellate decrees

Reference —

The following kinds of reference cases are contemplated by the Code of Criminal Procedure —

(1) Reference under section 123 Cl (2) Cr P C to High Court if the security is ordered by the Presidency Magistrate and to Sessions Judge if by any other Magistrate

(2) Reference under Sec 349 Cr P C to the superior Magistrate when inferior Magistrate cannot pass sufficiently severe sentence

(3) Reference to the High Court under Sec 341 Cr P C when the accused does not understand proceedings

(4) Reference by inferior magistrate to superior magistrate for taking an action under Sec 562 Cr P C

(5) Reference under Sec 438 Cr P C by the Sessions Judge or the District Magistrate to High Court on an applicati for revision Only on points of law such reference usually made 2 All 771.

(6) Reference by the Sessions Judge to the High Court under Sec 307 Cr P C when the former disagrees with the verdict of the Jury

(7) Reference to the third Judge under S 429 Cr P C when the Judges composing the Bench of the High Court are equally divided in opinion

(8) Reference to the High Court under Sec 374 Cr P C when a sentence of death has been passed upon the accused

(9) Reference to District or Subdivisional Magistrate regarding disposal of property under Sec 518 Cr P C

(10) Reference by the Presidency Magistrate to the High Court under Sec 432 Cr P C for the opinion of High Court on any question of law

(11) Reference by a Judge of a High Court exercising original Criminal Jurisdiction to two or more Judges upon any question of law under Sec 434 Cr P C

First Offenders —

Sec 562 Cr P C empowers Courts to release certain convicted offenders on probation of good conduct instead of sentencing them to punishment This section has been considerably amended by the Amending Act of 1923 The Statement of Objects and Reasons says as follows —

First this section extends the list of offences on conviction for which a person may be released upon probation secondly, it is made clear that section 562 Cr P C does not apply merely to the case of youthful offenders but applies to a wider class of persons, thirdly the word trivial has been omitted fourthly the period for which an offender may be released under this section has been extended from one to three years fifthly, power has been conferred on an Appellate Court or upon a High Court in the exercise of its revisional jurisdiction to make an order under section 562 Cr P C, and finally the High Court has empowered, either on appeal or in revision to inflict sentence of imprisonment in lieu of an order under this section

A convicted person has a right of appeal from an order passed against him under Sec 562 (a) Cr P C releasing him on probation of good conduct, though no provision as to appeal has been expressly made in respect of an order under Sec 562 1 Cr L J 543, 1 Cr L J 198, 18 Cr L J 400, 37 All 31

As an appeal lay on behalf of the convicted persons against whom the order under Sec 562 (1) Cr P C was made, there was a right of appeal in the other convicted persons who were not so released but who got non appealable sentences by the operation of Sec 415 A Cr P C 29 C W N 151

Local Inspection—There are two kinds of inquiry under the Code of Criminal Procedure

1st—Whenever a local inquiry is necessary for the purposes of Chapter XII, any District Magistrate or Sub divisional Magistrate may Depute any Magistrate subordinate to him to make the inquiry and may furnish him with such written instructions as may seem necessary for his guidance and may declare by whom the whole or any part of necessary expense of the inquiry shall be paid The report of the person so deputed may be read as evidence in the case

S 148

2nd—Any Judge or Magistrate may at any stage of any inquiry, trial or other proceeding after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such enquiry or trial and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection Such memorandum shall form part of the record of the case

S 539 B

Inherent Power of High Court—The High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code of Criminal Procedure or to prevent abuse of the process of any court or otherwise to secure the ends of justice

S 561 A

The Statement of Objects and Reasons says—

By this section it is proposed to give statutory recognition to the inherent powers of the High Court—a principle which is already well recognized

The Report of the Select Committee says—

We have slightly elaborated the provisions of this clause We understand that a High Court has recently held (44 All 401) that it had no power to direct the expunging of objectionable matter from a record We think it desirable that it should be made clear that this clause is intended to meet such a case

It is submitted that the quashing of proceedings which was formerly made under the Charter can now be made under Sec 561 A Cr P C

Compensation—There are two provisions of the Code of Criminal Procedure regarding the payment of compensation —

(1) In case of false frivolous or vexatious accusations the Magistrate may order the person upon whose complaint or information the accusation was made to pay compensation to the accused person

S 250

(2) When a Criminal Court imposes a fine it may order the whole or any part of the fine be applied in the payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is in the opinion of the Court, recoverable by such person in the Civil Court

S 545

393 of the Criminal Procedure Code no person who may be sentenced to death or to transportation or to penal servitude or to imprisonment for more than five years and no person whom the Court considers to be more than 45 years of age and no female can be punished with whipping and that under clause (3) of Sec 391 of the same Code no person can be punished with whipping in addition to imprisonment when the imprisonment is for less than three months

The maximum of punishment is 30 stripes and in the case of persons under 16 years of age 15 stripes The execution of a sentence of whipping by instalments is prohibited

Where whipping is the sole punishment awarded officers should make arrangements for having it carried out at once in private communications with the Civil Surgeon and other medical officer in charge of the station.

Withdrawal from prosecution —

Any public prosecutor may with the consent of the Court in cases tried by jury before the return of the verdict and in other cases before the judgment is pronounced withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried.

S 494

When a Court acting under Sec 494 of the Code of Criminal Procedure gives its consent to a withdrawal from a prosecution, it should record its reasons in order that the High Court may be in a position to say whether the discretion vested in the Court has been properly exercised 26 C. L. J 208

CHAPTER XVI

Some Important Trials

(a) Sealdah Gang Case

The most important of all trials is the sessions trial I propose to deal with this subject by illustrations, because, example is better than an abstract principle. But there are examples and examples From the trial of Arabinda Ghosh and Barindra Ghosh to the trial of Gangaram and Sew Prosad is a far cry But each trial has its lesson The longer the case the greater the lesson One of such longish trials is the trial in what is known as Sealdah Gang Case No wiser maxim than Coke's saying '*Melius est petere fontes quam sectari rivulos*' can guide the investigator in such a task and in the forefront of my authorities The prosecution was conducted by the Seniormost Public Prosecutor of the District of 24 Parganahs and the defence was led by the humble author of his Book The story of the case is one of those singular events where real life seems more romantic than romance itself It touches every chord that vibrates sympathy with scenes of mystery and terror and calls into play the deep-rooted principle of curiosity which leads one to the study of great crimes as aberrations of the moral nature From the surface of common life the original character of the accused is projected in bold relief a compact and consistent whole their strong intellect playing into the hands of their evil principle, their courage enabling them to realise their plans, their constancy to face their consequences The prosecution case was that there was a gang of dacoits and robbers which came into existence in 1916 The gang had a wrestling akhra at Maniktola Sett Bagan One Pramathanath Das *alias* Surendra Nath Das joined the gang in that Akhra After his introduction into the gang it committed in batches 135 crimes including 20 cases of dacoities between May 1916 and March 1923 There were several centres of association of the gang members as also places of specific association for committing particular crimes The gang members used to receive their training in the use of table knife drill Sindhkati, bhojali and revolver There was a Code of the language used by the gang The booty of a particular crime used to be distributed among members who were not parties to it or spent in the defence in Court of any member who happened to be arrested by the police or in defraying the expenses of his mistress or in feasts and merrymaking in which a host of other gang members who did not participate in the crime joined The gang had own experts in the use of table knife and drill in the rifling of irons and in the use of revolvers e g Nagen Bengal and Dhiren Shaha

he gives his name and address and satisfies such person that the name and address so given are correct (where his name and address are unknown) or until he can be delivered into the custody of a police officer Sec 76 says until he can be brought before a Magistrate' The detention therefore is to be only until he can be made over to a police officer in the one case or until he can be brought before a Magistrate in the other In either case the detention is to be only for such period as may reasonably be necessary This may be illustrated by reference to two English cases—*Morris v Wise* 2 F & F 51, and *Wright v Court* 4 B & C 596 In the first—it was held that a person (a private individual) justified under the Statute 7 and 8 Geo 4 C 30 in causing the arrest of another, must send him by the direct road to the lock up, for if he sends *extra vians* he would be trespasser against the person so arrested In the second—*Wright v Court* 4 B & C 596 a case of a police officer it was held that a constable arresting a man on suspicion of felony must take him before a Justice to be examined as soon as he reasonably can and that a plea justifying a detention for three days in order that the party whose goods had been stolen might have an opportunity of collecting his witnesses and bringing them to prove his felony is bad That is a statement of the common law and Sec 76 of Act IV of 1866 cannot be used as an implied repeal of a general right affecting the liberty of the subject Under Sec 77 the officer in charge of a police station may enlarge any person in the custody of any police officer without a warrant on his own recognizance and under Sec 78 every recognizance shall be conditioned for the appearance of the person thereby bound before the Presidency Magistrate at the next sitting If the accused enlarged on bail is to be brought before the Magistrate at his next sitting whether or not the investigation is completed it is difficult to see why the man who is not allowed bail or cannot find bail should not have that right. As pointed out in the order of reference the right to be taken out of police custody by being brought before a Magistrate is a right given in the interest of the accused ' It prevents arrest and detention with a view to extract confession or as a means of compelling people to give information It prevents police stations being used as though they were prisons—a purpose for which they are unsuitable It affords an early recourse to a judicial officer independent of the police on all questions of bail or discharge' The question is to be decided upon a construction of Sec 76 of the Calcutta Police Act. But similar provision in cognate Acts may be referred to show that a right of the person arrested to be produced as soon as it can reasonably be done before a Magistrate is recognised in such Acts Sec 61 of the Criminal Procedure Code provides that no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not, in the absence of a special order of a Magistrate under Sec 167, exceed 24 hours exclusive of the time necessary for the journey

from the place of arrest to the Magistrate's court Sec 45 of Act II of 1866 (Suburban police Act) also contains a similar provision It seems to me that the period of detention indicated by the words ' until he can be brought before a Magistrate" in Sec 79 of the Calcutta Police Act is the same as expressed by its provision ' under all the circumstances of the case is reasonable' in Sec 61 of the Criminal Procedure Code, and does not justify detention, beyond such period for police investigation It may be said that if that was the intention why was the time limit of 24 hours provided for in Sec 61 of the Cr P C or in Sec 45 of Act II of 1866 omitted from Sec 76 of the Calcutta Police Act? The answer would be more or less a matter of speculation It may, however be suggested that conditions in Calcutta in 1866 or at the present day were and are not the same as in the Moffussil Having regard to the means of communications there may be cases in which the police in Calcutta may be able to produce the accused within an hour of his arrest, on the other hand there may be cases in which hundreds of persons are arrested and in which they cannot be conveniently produced before a Magistrate within 24 hours So that the time-limit of 24 hours may be too long or too short in Calcutta Then again, in 1866 at any rate officers in charge of police stations in Calcutta presumbly belonged to a superior class of officers than darogas (Sub inspectors) in charge of police thanas in Mofussil and in the case of the former who were expected not to detain for any longer time than was required for bringing the accused before a Magistrate the time-limit of 24 hours might not have been though necessary or advisable So far as the time required for producing the accused before a Magistrate is concerned the Calcutta Act leaves it to the discretion of the police But the whole question is—Does Sec 76 of the Act contemplate detention for the purpose of completing the police investigation beyond the time reasonably required for producing the accused before a magistrate? Having regard to the common law right of the person arrested to be brought before the Magistrate as soon as is reasonably possible—a right recognised in the law relating to the whole of India outside Calcutta—it is impossible to hold that such right was impliedly repealed by the mere omission to state the hours of detention in Sec 76. There is nothing in the section to force one to that conclusion There is no indication in the Indian Acts (Sec 30 of Act XIII of 1856 Sec 45 of Act II of 1866, Sec 61 of the Cr P C) or in the English Acts (Sec 69 of 2 and 3 Vic C 47, Cl 15 of 10 and 11 Vic 1847 C 89 or Sec 38 of 42 and 43 Vict 1879) that the police can detain an accused, arrested without warrant, for a longer period than is necessary for bringing him before a Magistrate It cannot be said that Sec 76 of the Calcutta Act alone was based on a different principle It appears that the practice in Calcutta for about 60 years is that the accused is detained for such period as may be necessary for completing the police investigations The accused persons are brought before the Deputy Commissioners every morning who discharges them

sends them for trial or sends back to the lock up according to the state of the investigation reports It is said that the detention is under some rules framed by the Commissioner of Police under the powers conferred on him by Sec 9 of Act IV of 1866 But that section empowers the Commissioner to make such orders and regulations relative to the said police force as the said Commissioner shall from time to time deem expedient for preventing neglect or abuse and for rendering such force efficient in the discharge of all its duties They seem to refer to orders and regulations for the guidance of police officers and for internal management of the police force and the words for rendering such force efficient in the discharge of all its duties *cannot include the power of making rules for detaining* a person arrested without warrant for a longer period than is necessary for producing him before a Magistrate If the practice originated from these rules it cannot be said to be based upon a solid foundation The power of detention by the Deputy Commissioner of Police has been considered so far as one is aware in three cases In the case reported in 52 Cal 67, a question was raised as to the legality of the detention of the accused in the Lal Bazar lock up and Mukherji J presiding at the Sessions observed On a consideration of the relevant provisions of the Calcutta Police Act (Bengal Act IV of 1866) I am disposed to take the view that there is no power of detention for an unlimited period such as is claimed on behalf of the prosecution in the Deputy Commissioner by virtue of his being a Justice of the Peace It is said that it is understood generally that there is such a power there being in fact no limitations prescribed anywhere and Sec 61 of the Cr P C not being applicable to the Calcutta Police That no doubt is so but I am aware that in the matter of *Mahommed Raiyan v King Emperor* decided on 18 9 1922 (unreported) Walmsley J held a detention under similar circumstances as improper, presuambly on the ground that no such unlimited power exists" The question was not actually decided in either of the two cases but they indicate the views taken by the learned Judges In the cases of *Sri Lal Agarwalla v The Emperor* Cr Mis Case No 51 of 1926 decided on 1 4 1926 (unreported) Suhrawardy and Duval JJ held that an order of detention pending police investigation is not illegal The decision rested on two grounds, viz —(1) that there is no period mentioned in the Calcutta Police Act within which the accused must be brought before a Magistrate and (2) that as a Justice of the Peace the Deputy Commissioner is entitled to take such steps as may be necessary to complete an investigation before placing the matter before a Magistrate. As for the first ground it is true, that no period is fixed in the sense that the days or hours are not mentioned but it cannot be said that there is no time limit the limit being *until he can be brought before* a Magistrate which means within such time as under all the circumstances of the case is reasonable With regard to the second ground Sec 7 of the Act shows that the Deputy Commissioner as a

Justice of the Peace has the power of detention only 'in order to bring the offender before a Magistrate and it has been expressly stated that no power of detention has been claimed for the purpose of investigation in a Deputy Commissioner as a Justice of the Peace If Sec 76 of the Act does not empower the police to detain an accused for the purpose of investigations a question arises whether there is any provision in the Act for remand by the Magistrate to police custody for such such purposes Sec 167 of the Cr P C which lays down the procedure in cases where the investigations cannot be completed in 24 hours and empowers the Magistrate to authorise detention of the accused in police custody for such purposes for a term not exceeding 15 days does not apply to the Calcutta Police There is Sec 344 under which a Magistrate may order a remand before commencing an inquiry or trial It has been held however that the remand contemplated by this section is not a remand to police custody but a remand to magisterial custody See 23 Bom 32 and 11 Mad 98 In these circumstances it is for the Legislature to consider whether provisions should be made authorising and regulating remands to police custody For these reasons both the questions referred to the Full Bench should be answered in the negative

Another question arose as to why all possible witnesses were examined in this case

One Ram Ranjan Roy was charged with having committed murder of one Bunwari Lalk by being present and abetting one Madhub Mistri in striking and thereby killing him The allegation was that he gave orders to Madhub Mistry to strike Bunwari who was thereupon hit on the head with a lathi Ram Ranjan Roy was convicted under Sec 302 read with Sec 114 I P C In the course of the trial two persons who were admittedly eye witnesses to the occurrence were not called as witness by the prosecution either in the committing Magistrates or in the Sessions Court Chief Justice Jenkins and Justice N R Chatterjee held as follows —

Mr Donough contended that the prosecution even in a case of murder was only bound to call witnesses in their favour and for this he relied on a remark attributed to Sir Arthur Wilson in the report of *In re Dhunno Kazi* 8 Cal 121 S C 10 C L R 151 But this remark appeared to me so opposed to the established rule and also to the whole trend of the judgment that **I examined the original record and there found that the words used by the learned Judge was not favour but power and this is how the judgment is reported in 10 C L R 151. Obviously therefore Sir Arthur Wilson's authority cannot be invoked in favour of the prosecution's contention and if as we have been told the conduct of the Public Prosecutor is in accordance with the general Mofussil practice, the sooner that practice is stopped the better The practice if it rests on a fundamental misconception of the purpose of a criminal**

and the duty of the public prosecutor That purpose is not to support at all costs a theory but to investigate the offence and to determine the guilt or innocence of the accused and the duty of a public prosecutor is to represent not the police but the Crown and this duty should be discharged by him fairly and fearlessly and with a full sense of the responsibility that attaches to his position The guilt or innocence of the accused is to be determined by the tribunals appointed by law and not according to the tastes of any one else I certainly infer that the prosecution has not placed before us a complete picture of what o cure l but has withheld that which would have been favourable to the accused 19 C W N 28

Besides the approver the other witnesses were examined from the 11th March 1924 to the 4th September 1924

It is the ordinary duty of every Magistrate holding an inquiry in which a commitment may be necessary to accelerate his proceedings so as to make the commitment if possible before the date fixed for the commencement of the ensuing sessions and it is the duty of every superior Magistrate that is the District Magistrate or Sub divisional Magistrate carefully to supervise the proceedings of every Magistrate subordinate to him so that this may as far as possible be attained In order to facilitate this as soon as the dates of the Sessions fixed for each year are settled a calendar showing the same is printed and fixed in a conspicuous place in the court and of every Magistrate

The approver was in police custody—therefore no anxiety was felt about his attendance in the the Sessions Court

Other witnesses were all bound over to appear at the next Criminal Sessions commencing on— It was carefully explained that failure to attend should be severely dealt with After the examinations of witnesses the accused persons were all examined for the purpose of enabling them to explain any circumstances appearing in the evidence against them But all the accused made no statement but reserved it for the Sessions After their examinations the Public Prosecutor argued the case on behalf of the Crown The defence argued —

1 Confession of the approver—

(a) Lapse of time between the arrest of the approver and the recording of his confession One might infer about the tutoring of the approver by such a lapse of time The practice is that no time should be wasted in recording the confession of the approver

(b) Seeking to obtain the confession first and to get the corroborative evidence thereof

It is tantamount to procuring perjured evidence in the light of confession Vide Police Regulations Bengal Vol V p 36 correction slip no 1 Rule 16 Cl (2)

II (a) Illegal detention of the accused in the police custody from the 5th August 1923 to the 20th August 1923 Vide 38 Cal L J 388

(b) Illegal detention of the accused in the magisterial custody from the 20th August 1923 to the 1st October 1923 Vide 38 C L J 388 It is clear therefore that the case was in course of preparation during this period

III. First information Report is not according to law

First information means information received at the earliest possible time The Investigation will commence with the First Information—Vide S 154, Cr P C , Police Regulations Bengal, Vol V, page 22 Rules 70 to 71 also at p 25 Rule 78 cl (5)

As investigation is started with the First Information Report it must be recorded at the earliest possible opportunity But here in the present case the investigation has been started long before the recording of the First Information Report It was delayed 8 months Three rulings 7 C W N 345 6 C W N 921 and 11 C W N 554 clearly prove that the F I R which was recorded in the present case is not according to law

IV **Challan is not according to law**

Challan is not charge sheet defined in S 173 Cr P C, Police Regulations Bengal Vol V p 63 Rule 164 The present challan is not in the form prescribed by the Local Government—vide Police Regulations, Bengal App p 19 P R B Form No 244

The names of all the witnesses are not given

Further there is a delay from the 6th October 1913 to 31st January 1924 in submitting the Challan

These are the illegalities which make the proceedings void —25 Mad 61 at p 97 per Lord Halsbury (Lord Chancellor) *Crane v Director of Public Prosecutions* (1920) 3 K B 236 per Earl of Reading C J.

On the 26th September 1924 the Police Magistrate of Sealdah found that there are not sufficient grounds for committing the accused Pranath, Khot Suren and Banamali and discharged them under Sec 209 Cr P C. With regard to the other accused the Magistrate passed the following order —

' On a consideration of all the facts and circumstances I find that a very strong prima facie case has been made out under sections 400 and 401 I P C against the first 47 accused persons and accordingly I frame charges against them under both the sections and commit them to take their trial before the Court of Sessions

Thereafter the charge was framed As soon as it was framed it read over and explained to the accused and a copy thereof was given them free of cost

The accused were then asked to give in, orally or in writing, a

persons (if any) whom they wish to be summoned to give evidence at the trial All the accused persons declined to do so

The Magistrate had power to allow the accused to give in a further list of witnesses at a consequent time

Difference between the procedure in Inquiry into cases triable by the Court of Sessions and the High Court There is absolutely no difference except that in Moffussil the committing Magistrate alone is authorised to take the list of defence witnesses but in trials before the High Court the accused can give at any time before his trial to the clerk of the crown a list of the persons whom he wishes to be summoned to give evidence at such trial, and that the clerk of the crown summons the defence witnesses and not the committing Magistrate as in Moffussils

The committing Magistrate has power to summon and examine any witness named by the accused as his defence witnesses If the Magistrate after hearing the witness of the defence, is satisfied that there are not sufficient grounds for committing the accused, he may cancel the charge and discharge the accused.

In cases where the accused gives in any list of witnesses and is committed for trial the Magistrate summons such of the witnesses included in the list as have not appeared before himself, to appear before the Court to which the accused has been committed But if the Magistrate think that any witness is included in the list for the purpose of vexation or delay or of defeating the ends of justice, the Magistrate generally requires the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, refuses to summon the witness (recording the reasons for such refusal) or *before summoning him requires such sum to be deposited* as he thinks necessary to defray the expense of obtaining the attendance of the witness and all other expenses In the present case the witnesses were bound over, but in cases where the witness refuses to attend before the Court of Sessions or execute the bond above directed, the Magistrate generally detains him in custody until he executes such bond or until his attendance is required the Magistrate will send him in custody to the Court of Session

After committal to the Court of Sessions, the police Magistrate of Sealdah entered the names of all witnesses on the back of the charge-sheet *which was forwarded to the Court.*

The charge itself formed part of the Sessions record. In cases where the charge forms part of the Magistrate's record it is detached therefrom in the same manner as the examination of the accused, or any evidence taken in the Magistrate's court which for some special reason, is made evidence at the Sessions trial

The committing Magistrate then notified to the Court of Session, without delay, stating the number of days over which in his opinion the trial

is likely to extend In cases like these the following direction should be borne in mind :—

The papers on the record of the Magistrate are not evidence in the Court of Sessions either for or against the accused, except so far as they are formally put in at the trial and accepted by the Court as evidence

The observations or judgment of the Magistrate in committing the prisoner shall always go up in original with the record and they, with the original depositions should be read by the Judge before the trial

District Magistrates should comply with Sec 509 on the Criminal Procedure Code, which provides that the depositions of the Surgeon or other medical witnesses taken and attested by a Magistrate in the presence of the accused may be given in evidence in any inquiry, trial, or other proceeding under the Code although the deponent is not called as a witness In order to secure compliance with the provisions of the section quoted, Magistrates are hereby directed to sign at the foot of the depositions of medical witnesses a certificate in the form indicated below —

The foregoing deposition was taken in the presence of the accused who had an opportunity of cross examining the witness. The deposition was explained to the accused and attested by me in his presence

(Signature)
Magistrate

If the Magistrates carefully and fully record medical evidence there will be no necessity for summoning the medical witness to attend before the Sessions Court, except for special reasons in particular cases The accused persons or their pleaders should be asked at the time of commitment whether they wish to have the medical witness summoned before the Sessions Court, or whether they consider that the evidence recorded by the Magistrate, which should be carefully attested in their presence, is sufficient If they desire the personal attendance of the medical witness, this should be regarded as sufficient reason for summoning him

When several persons are accused of the commission of the same offence, it would be obviously inconvenient if a Magistrate were to punish some and commit others to the Court of Session , and as the Code does not seem to contemplate such procedure the Magistrate should, if he considers the case to be one for the sessions commit all those concerned for trial before that tribunal

In cases where death appears to have resulted from injuries voluntarily inflicted by the party accused, Magistrates ought to be very careful not to take it upon themselves to absolve the accused from the graver of and convict of hurt or grievous hurt only, unless they are quite that there is no sufficient evidence to a commitment to the sessions murder or culpable homicide not amounting to murder. When

certain that death has resulted from the wilful and unlawful acts of the accused, Magistrates should be careful not to take upon themselves the responsibility of convicting of minor offence, unless they are satisfied that the evidence adduced to show that the offence of murder or culpable homicide has been committed palpably false, or clearly insufficient to support a conviction Magistrates are given full discretion not to commit when the evidence, in their opinion, does not justify a commitment, and this discretion should be carefully exercised by them

Under the provisions of Sec 238 of the Criminal Procedure Code it is unnecessary to frame separate charges in respect of minor offences of the same class included in an offence of a graver character with which an accused person is charged

The Police Magistrate of Sealdah after the commitment order committed all the accused by warrant to custody

They applied to the Sessions Judge of Alipur for bail which was rejected They then moved the High Court and obtained a rule The accused thought that the trial would be indefinitely delayed But Mr D C Patterson was appointed the Sessions Judge for the trial of the case The Sessions Judge fixed the 20th October 1924 as the day for the commencement of the trial Consequently, the rule for enlargement of the accused on bail was not pressed The Sessions Judge then informed the committing Magistrate about the day for the commencement of the trial The Magistrate notified the same to the witnesses through the Local Police. The Magistrate and the Local Police were held responsible for the necessary arrangements to ensure the attendance of witnesses. Written notices were also given to the witnesses of the specific date on which their attendance was necessary

A specially constructed strong dock was erected in the court room of the District Magistrate of Alipore where the trial was held. On the 20th of October 1924 the Court was ready to commence the trial The accused were brought before it and the charge was read out and explained to them and they were asked whether they were guilty of the offences, or claimed to be tried They claimed to be tried The accused persons instead of doing this might have refused to plead or might not have pleaded at all But if they pleaded guilty, that would have been recorded and they would have been convicted forthwith The Judge thereafter wanted *to choose Jurors and to try the case. But the leader of the defence* raised the plea of demurrer on the following grounds —

I. So far as the case under S 400 I P C is concerned the Court has no jurisdiction Most of the accused persons reside in Calcutta and on their behalf the present question is raised. And the last place of association is within the town of Calcutta S. 131 Cl (I), Cr P C. which is a special provision regarding the offence of having belonged to a gang of dacoits applies The last word of the clause of the section is 'Is'

—that is to say, exists The dictionary meaning of the verb 'to Be' is to 'exist' It appears from the page 1 of the approver s statement before the committing Magistrate's Court that he resided at 5 Nather Bagan Street, Jorabagan within the presidency town of Calcutta The prosecution relied upon the third paragraph of Sec 182, Cr P C, but as the offence cannot be called a continuing one, it has no application to the present case The following are the case against the defence contention

(1) 6 Bom 622 In this case the accused committed an offence of Criminal Breach of trust in Sishoi territory (foreign territory) but brought to Ahmedabad by the police The accused took no objection to jurisdiction —Further, as the case is one of criminal breach of trust, it is governed by Sec 183, Cr P C

(2) 13 Bom 147

This case also is one of criminal Breach of trust

(3) 9 Ind cas, 677—is distinguishable

(4) The strongest case on the side of the prosecution is 1 P R 1911—it is a case relating to an offence under S 400 I P C But this case is also distinguishable

(6) *R v Lopez* 27 L J M C 48 This English case has no application because the English Statute, 18 and 19 Vict C 91 S 21 was repealed and re enacted as statute, 57 and 58 Vict C 60 Sec 686 and the latter statute created jurisdiction in courts other than those within which the accused resided

The Judge after hearing both sides overruled the objection of the accused

II Next objection is that the Court cannot hold its sitting at the court room of the District Magistrate In support of this contention the leader of the defence cited clause (2) Sec 9 Cr P C which runs as follows —

The Local Government may by general or special order in the official Gazette, direct as what place or places the Court of Session shall hold its sitting, but until such order is made the Courts of Session shall hold their sittings as heretofore

As the District Judge s Court rooms are places where the Sessions Courts are held and there are no direction by the Local Government it cannot hold its sitting at the Magistrate s Court room

The Public Prosecutor interpreted the meaning of the word 'place' as 'town as distinguished from 'house The defence referred to S 4 clause (q) Cr P C where place' includes a house etc The Judge overruled this objection also

III Misjoinder of charges

Sections 233 234, 235, 236 and 239, Cr P C are relevant sections on the subject They were read over to the Judge Now, here are 47 accused

persons with two charges against each of them Ordinarily there ought to be 94 trials But the prosecution will rely upon Cl (1) of Sec 235 and Cl (d) of Sec 239

In order to bring the case within clause (1) of Sec 235 two things must be shown —

1st —There must be one series of acts 2nd —That such one series of acts are so connected together as to form the same transaction

Here there were many series of acts and there were also many transactions

See *Jabbor Ali v Emperor* 28 C W N (notes) 100 Therefore section 235 Cr P C does not apply

Let us now consider S 239 Cr P C Read Cl (d) In the case reported in 30 Bom 49 the same transaction has been defined According to its etymological meaning the word transaction means carrying through and suggests not necessarily proximity in time so much as continuity of action and purpose *a series of acts separated by intervals of time* are not excluded provided that those jointly tried have been directed throughout to one and the same objective If the accused started for the same goal this suffices to justify the joint trial even if incidentally one of those jointly tried has done an act for which the other may not be responsible. The foundation for the procedure is the association of two persons concurring from start to finish to attain the same end Where, therefore two persons who are jointly in charge of a trust fund carried out their scheme of breach of trust by successive acts done at intervals alternately taking the benefits this circumstance did not prevent the unity of project from constituting the series of acts one transaction i e carrying through of the same object which both had from the first act to the last Two tests (1) Whether all the conspirators are carrying out series of acts from the start to finish with the common objective

(2) Whether there is continuity of action With regard to the 1st point the prosecution case is clear that different accused persons have joined the gang at different times and different persons were engaged in different overt acts Therefore the prosecution has failed to pass the 1st test With regard to this test, I propose to cite another case viz 29 Bom 449

2nd test—Before the test is considered it is better to look to the charge Read the charge The accused are charged under Sec 400 and 401 I P C Read Secs 400 and 401 I P C

The words **not being a gang of dacoits in Section 401 are important This excludes the offence under Sec 400 I P C** The prosecution case is clear that an act is sometimes done with a particular objective mentioned in Section 401 and is abandoned for sometime and pursued afterwards and sometimes an act is done with a particular objective mentioned in Section 400 I P C and it is again abandoned for sometime and pursued afterwards The case applicable to this point is that of *Choragulu v Emperor*,

I L R. 33 Mad 502. The idea conveyed by the words is, Same transactions' could be tried at one trial for all the burglaries he committed in 10 years. Mark the words 'For it may happen that an act is done with a particular objective in view but the final aim is abandoned for some time and pursued afterwards' Accordingly Cl (d) of Sec 239 does not apply 15 Bom 491, 12 Cr L J 260

Result of misjoinder is the vitiation of the trial The leading case on the subject is that of *Subrahmania Ayyar v King Emperor* I L R 25 Mad 61 The case is also instructive on another point The crown counsel, Mr Arthur Phillips, argued that as the conspiracy was the foundation of the offence any number of acts could be tried together under Section 235 The Privy Council over-ruled this contention See also the case of *crane v Director of Public Prosecutions* (1920) 3 K B 235 The Public Prosecutor cited the following unreported case in reply decided by Ameer Ali and Pratt JJ —

Azizul Rahaman and others *Appellant*

versus

The Emperor . . *Respondent.*

This is an appeal by 23 persons who have been convicted by the Sessions Judge of Purnea under section 400 of the Indian Penal Code, some being sentenced to transportation for life and others to transportation for ten years

We have carefully anxiously examined the evidence in respect of all, and we have had the advantage of hearing learned counsel for the two appellants, Barfi Singh and Jadulal Mowar, upon the facts as well as on the questions of law affecting the entire case

It appears upon the evidence that a number of dacoities were perpetrated between Februbary 1900 to April 1909, within the sub division of Araria The case for prosecution is that the present accused the appellants before us were members of a gang of dacoits associated for the purposes of habitually committing dacoities within this area and were in fact the perpetrators of the dacoities which occurred in Araria within the period The police after considerable difficulty were able to trace the different sections of the gang and to bring home it is alleged to the present accused the fact of being members of that gang These were tried before the Sessions Judge of Purnea with the help of assessors The charges upon which they were committed to the Sessions Court were under sections 400 and 401 of the Indian Penal Code The trial practically proceeded under section 400 Gauria Sheikh one of the men accused, became an approver and received a pardon under section 337 of the Code of Criminal Procedure His evidence was taken in the Sessions Court. Upon Gauria's evidence and the evidence of a number of other witnesses who were called for the purpose of corroborating the statements of

approver in concurrence with the Assessors found all the accused, guilty under section 400 of the Indian Penal Code, save and except Bhai Lal Kali Barfi Singh Doman Singh Ram Dhani Thakur, and Ensar Sheikh The Session Judge was however, of opinion that the case was proved against all the accused and he accordingly convicted them under that section of being members of a gang of dacoits associated for the purpose of habitually committing dacoities in the subdivision of Araria

Two questions of law have been raised by the learned counsel for the appellants Aarfi Singh and Jadulal Mowar

In the first place he contends that there was a misjoinder of the charges inasmuch as the accused were charged both under sections 400 and 401 of the Indian Penal Code the two counts relating to two distinct offence and that the trial proceeding upon those charges so joined was illegal He urges that having regard to the pronouncement in the Privy Council case reported in I L R XXV, Madras the entire trial is bad and the conviction ought to be set aside

He further contends that inasmuch as the offence under section 401 was not exclusively triable by a Court of Sessions the use therefore of the evidence of an approver is a trial under both the counts vitiates the entire proceeding and makes the conviction illegal

In order to consider how far these two objections are valid it is necessary to examine sections 400 and 401, Section 400 provides as follows — Whoever at any time after the passing of this Act shall belong to a gang of persons associated for the purpose of habitually committing dacoity shall be punished with transportation for life or with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine

Dacoity is thus defined in section 391 — When five or more persons conjointly commit or attempt to commit robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery and the persons present aiding such commission or attempt amounts to five or more every person so committing attempting or aiding is said to commit dacoity' Now in section 39 the chief element in robbery Robbery is defined in section 390 as follows —"Theft is robbery, if in order to the committing of the theft or in committing the theft or in carrying away *or attempting to carry away* property obtained by the theft for that end voluntarily causes or attempts to cause to any person death or hurt, or wrongful restraint or fear of instant death or of instant wrongful restraint

It will be seen therefore that the primary ingredient in the offence of dacoity is the dishonest taking which constitutes theft Theft with violence is robbery Robbery committed by five or more persons is dacoity, and section 400 pronounces that when a number of persons are associated for the purpose of habitually committing dacoity, they shall be liable to

punishment under that section Section 401 deals with a minor offence. It runs as follows —

'Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery and not being a gang of thieves or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years and shall also be liable to fine ' The element of wrongful taking is present in this section also The ingredient which makes an unlawful association is the same element which is present in section 400 In one case it is the more serious offence , in the other as stated already, it is an offence of a minor degree If the sections are carefully analysed, it will be seen that they do not relate to two distinct offences, as the learned counsel for the appellants contends but they are offences of the same kind and class, only one is of a minor character and is liable to a lesser punishment *Take for example the case of an ordinary criminal* breach of trust and criminal breach of trust by a public servant the latter offence is of a more serious character, because an additional element, namely that of the person committing the breach of trust is a public servant is present in the case , or take another example a case of homicide The offence may be culpable homicide amounting to murder or not amounting to murder, but the fact that the act of the offender has resulted in the death of a person is present in both instances Other facts constitute it in order to bring it under the minor category We are of opinion, therefore that there is no force in the argument that the trial under sections 400 and 401 was a trial for two distinct offences , and we are further of opinion that under the section 236 the accused in this case could be and have been, validly charged and tried in both Courts and that there was no illegality such as is contended in this case

The next question which we have to consider is whether the reception of the evidence of the approver vitiates the trial We have examined the records and find that the pardon was regularly and legally tendered to Nauria Sheikh and accepted by him *The trial has been practically under section 400* of the Indian Penal Code The evidence of the approver has been accepted in that proceeding If our view be correct, that section 401 represents an offence of the same class although of a minor degree we see absolutely no reason for holding that because there were two counts one under section 400 and the other under section 401 the fact that the pardon was tendered and accepted under section 400 vitiates the proceedings

With these remarks we proceed to deal with the evidence in the case

It has been urged and urged with considerable force that the evidence given in this case does not corroborate the statements of the approver No one fact is beyond dispute, viz , that a considerable number of d..

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Two questions of law have been raised by the learned counsel for the appellants Aarfi Singh and Jadulal Mowar.

In the first place he contends that there was a misjoinder of the charges inasmuch as the accused were charged both under sections 400 and 401 of the Indian Penal Code the two counts relating to two distinct offence and that the trial proceeding upon those charges so joined was illegal He urges that having regard to the pronouncement in the Privy Council case reported in I L R XXV, Madras, the entire trial is bad and the conviction ought to be set aside

He further contends that inasmuch as the offence under section 40 was not exclusively triable by a Court of Sessions, the use therefore of th evidence of an approver is a trial under both the counts vitiates the entir proceeding and makes the conviction illegal

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With these remarks we proceed to deal with the evidence in the case

It has been *urged and urged* with considerable force, that the *evidence* given in this case does not corroborate the statements of the approver Now one fact is beyond dispute viz that a considerable number of dacoits

were committed within the period of two years or thereabout within a comparatively small area of the subdivision of Araria The approver took part in several of these dacoities, and his evidence is that the gang consisted of several sections He knew many of those people by names as also the places where they live He mentions the men whom he knew and whom he identified in Court He describes the mode in which the attacks used to be made upon the sections of the dacoities He describes the places where they used to meet to lay other plans or to collect before they set out to commit any particular dacoity He gives the names of the people, at whose houses or shops they put up from time to time, and relates a number of circumstances connected with the offences in which he himself was personally concerned He says that the leading men of the gang were Barfi Singh Jadulal Mowar, and himself Barfi is a man of some substance and Jadulal Mowar also appears to be possessed of some means of his own Gauria says that the business of the headmen was to collect men and supply weapons and expenses Their meeting places are described to be 'Chandradai *mela* Chandradai *gachi* Rajokhar market and *gachi*, Raghu Modi's shop at Araria railway station the market near the station, the cutcherry compound Prayag Modi's shop at Basantpur, Latifan Natin's (a prostitute) Mathura Halwai's, Barfi Singh's lodging at Basantpur" The ancient wisdom of this country, as embodied in the institutes of Manu, has pointed out the gathering places of malefactors such as robbers and dacoits for the king is advised to look for them in market places, at public ghats and wells, in the houses of harlots and similar places open to the public at large, and the history of this case bears out the truth of the above

Sheo Nundan Sahai a respectable mukhtear, practising in Araria says — I know Mathura Halwai His shop is about two *rashis* from my *basha* Excepting Azizul all the accused I have named, used to stop at Mathura's, while their case was pending from December to March or April I think I also know Prayag's shop which is eight or nine *rashis* from my *basha* I heard an uproar there about 8 or 9 P M in March or April before last. I was going there when I saw accused Guhi being taken to the thana Two chaukidars were with him and one of them was carrying a bundle containing ornaments Guhi had a wound on his head. Next morning I ceased to stand bail for *Guhi, Bhabu, and Sunder and they were sent to jail* Before the case was called that day I saw Bhalal Gora receiving some money from Bhabu After this they were remanded to jail I identify Bhalal Gora'

The evidence of Majdar Rahman who is also a mukhtear is as follows —'I knew Gauria before the *budmashi* case I know Kamal laha which is 6 miles from Araria. I heard of a dacoity at Teli's house there before the section 110 case was begun" and he goes on to add —

"I know Parag Bhagut's shop at Basantapur also Mathura Halwai's" These were the two shops mentioned by the approver as the place where the members of the gang used generally to put up 'All Parag Bhagut's shop he goes on to say I saw Sundar Kumar Hela Bakul Pitlal and Chaman sometimes some and sometimes others about that time from April to August 1902 I think and also previously I saw them three or four times Bhagawan Dyal Bhagut has a shop 50 paces from Parag's I have seen these men I have named four or five times there in that cold weather Barfi Singh's *basla* is 6 or 7 *rasis* from there I have seen Doman Ramdhani Koko Judulal Chaman, Sundar Kumar, and Gokhul at Barfi Singh's house with Barfi four or five times about that period

Now there can be no doubt upon the evidence of this witness that Barfi Singh who represents himself as a man occupying high position in life and of considerable substance associated with some at least of the other accused and that the latter were frequently seen at his house The same witness goes on to say —'I saw Jadulal two or three times I think at Parag's shop He used to put up there or at Mathura's I may have seen him twice or thrice at Bhagawan Dyal's I stated in the lower Court that I saw Jadulal in company with Barfi Singh and others near Barfi's *basla* I said in the lower Court that I had seen Sundar Kumar near Barfi Singh *basla* I think I saw Barfi Singh in the company of Gauria during the section 110 cases

Moula Buksh a school master says — I know witness Gauria Of the accused I know Azizul Kudrat Sunder Hela Ritlal and Fatkan I knew Shamsar Karu and Jamal of Rajokhar and Rupauli They are now in jail I have seen all these persons holding meetings in Rajokhar *garhi* and in the *modi's* shop at Araria station There were others with him whom I do not know I have seen them three or four times at Rajokhar *garhi* and as often in the *modi's* shop This was in *Agrahan* before last and the following month or two They were discussing some plan and smoking *ganja* and drinking *tari* After wards I heard of dacoities in *Politpur Candlari* Rebi and Kamaldaha.

Another witness a chaukidar Dil Mahammed says — I know Azizul Guhi Bind Sundar Doman Singh Jadulal Barfi Singh Gokhul Gora Bhulal and Gauria I saw them at the house of Mathura Halwai of Araria eight or nine times from *Falgun* (18 months ago) to *Chait* before last I arrested Guhi Bind one night in *Chait* before last at Parag Bhagat's of Basantapur I found him and four or five others selling these ornaments while they were weighing The others ran away Now this man is corroborated by Sheo Nandan Sahai and there seems to be no reason to disbelieve his testimony

There are other witnesses who speak to seeing these men

at different shops and in different *gachis*, market places and so forth The mode in which the attacks used to be made is also borne out by the persons who were victims of the dacoities The evidence in this case is voluminous and has been very carefully and minutely examined by the court below It does not seem to us necessary to discuss the statements of every single witness We think that the evidence of the approver has been corroborated in material particulars by the testimony of the witnesses against whom no definite allegation has been made

We have given due weight also to the views of the assessors in relation to Barfi Singh and Jadulal Mawar and the three other men but we think that the view of the Sessions Judge is correct, namely that these two men were the leaders of the gang In our opinion therefore the conviction of the accused in this case is right and ought to be sustained But we see no reason to maintain the sentence of transportation for life in the case of the men upon whom that sentence has been passed by the Sessions Judge and we reduce the sentence of transportation for life to transportation for ten years In the case of Kudrat Sheikh Hela *alias* Hedayat Gokhulia Kumar Moti Das, Saukhi Singh Doman Singh and Fnsar Sheikh who according to the learned Sessions Judge have either played less important parts or are comparatively young we alter the sentence imposed on them to one of rigorous imprisonment for seven years

The Judge over ruled this objection also

The defence also raised objections to the F I R, and the Challan and mentioned about the illegal detention of the accused person but the Judge did not think it worth while to consider all these points at this stage of the case

Then the Judge proceeded to choose Jurors The Jurors were chosen by lot from the persons summoned to act as such The Sessions Judge caused to be put together in one bo... ...es of paper containing the names of all the persons summoned to attend, except some of the persons who were excused by the Sessions Judge from serving in this case Such pieces of papers were of equal size and each contained the name of one person summoned to attend The Sessions Judge then in open Court drew or caused to be drawn out of the said box one after another, as many of the pieces of papes as represented the number of Jurors required to try case, *these wer objection to some of the Jurors and in some cases objections* were allowed and in some objections were disallowed

In the case reported in 31 C W N 1102 it was held that Sec 326 Cr P C. requires a definite minimum of jurors to be summoned for a particular case and the word "required in proviso 2 sec 276 must refer and is relative to the words immediately preceding namely, in case of a deficiency of persons summoned' It is this deficiency that under the proviso may be made good from such other persons as might be present

in Court and the meaning of the word 'chosen in the proviso must mean chosen by lot Sec 279 contemplates an ordinary normal case of the jurors summoned attending but by reason of the challenges or other causes such as some of them being excused no summoned juror is left to take the place of the last challenged juror In such an eventuality some other person present in Court may be empanelled. In so far as Sec 279 (2) permits a person not chosen by lot to be empanelled it certainly introduces an exception to the general rule but this is only in the exceptional conditions stated and in emergent circumstances But this principle of law has been overruled by the Full bench case reported in 32 C W N notes p 27 where it has been held that there is a distinction in language between Sec 276 and the second proviso to that section and the correct procedure for empanelling a jury is this In the first instance there is to be a ballot among the persons summoned under Sec 326 without any preliminary enquiry as to how many of them are present As each name is drawn from the box and called aloud it will appear if the person bearing that name has attended and if he has the accused shall be asked if he objects to be tried by such juror and in case the objection prevails the person concerned shall be eliminated It is only when the names in the ballot box have in this manner been exhausted that any deficiency which may occur will become manifest. That deficiency will be the number by which the number of persons already empanelled falls short of the number of persons of which the jury must consist Then and not till then will the second proviso to Sec 276 begin to operate and on that point being reached the court unless it decides to adjourn the case for a fresh Jury to be summoned will allow jurors to the number required to make up the quorum to be chosen from among the bystanders This choosing however will not be by lot, but the accused shall have his right to challenge any of the persons proposed in this manner as in the case of persons regularly summoned The case reported in 44 C L J 541 and in 31 C W N 1103 were over ruled The practice obtaining in the District Court of ascertaining before the ballot is commenced how many of the persons summoned have attended and thus determining the deficiency to be supplied is not authorised by law and should be discontinued

As each juror was chosen his name was called aloud and upon his appearance the accused was asked if he objected to be tried by such juror Objection was taken to some of the jurors by the accused s lawyer and the grounds of objection were stated

In the present case the grounds (a) and (c) of the following grounds of objection were taken

(a) Some presumed or actual partiality in the juror,

(b) Some personal grounds such as alienage deficiency in the qualifications required by any law or rule having the force of law for

of mind must show it exists, not generally but in reference to the particular matter in question Two illustrations (e) and (f) of Section 43 of the Indian Evidence Act were not then in existence Before 1891, Sec 54 of the Indian Evidence Act runs as follows —

In Criminal Proceedings the fact that the accused person has been previously convicted of any offence is relevant, but the fact that he has a bad character is irrelevant unless evidence has been given that he has a good character, in which case it becomes relevant

Explanation—In Ss 52, 53, 54 and 55, the word character includes both reputation and disposition, but evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown

In 1887 the Full Bench Case of *Queen Empress v Kartic Chandra Das* 14 Cal 721 was decided The result of the Full Bench decision led to the passing of Act III of 1891 By this Act the following additions were made to Sec 310 Cr P C —"Notwithstanding anything in this section, evidence of the previous conviction may be given at the trial for the subsequent offence if the fact of the previous conviction is relevant under the provisions of the Indian Evidence Act, 1872"

By Act III of 1891, Explanation 2 of Sec 14 Indian Evidence Act was added which is as it is now Read new section of the Evidence Act.

By Act III of 1891, Illustrations (*e*) and (f) of Sec 45 Evidence Act are added Read these illustrations

By Act III of 1891 the Sec 54 of the Evidence Act was modified

In the case reported in 1 C W N 146, the previous convictions are held to be inadmissible. The Public Prosecutor in reply put the 2nd and 3rd points together and said that previous convictions are evidence in this case as evidence of habits He referred to 27 Cal 129 16 C W N 69

3rd. point—If the Public Prosecutor wants to put in the previous conviction not as evidence of habits, he cannot be guided by the provisions of the Indian Evidence Act Because under the Indian Evidence Act, it is only relevant as evidence of character Therefore the procedure must be followed as provided in Sec 310 (*a*) i, ii, Cr P C The case reported in 31 C. L J 192 supports the defence

The Judge over ruled the contention of the defence. The objection was made to the statements of the occurrences which were not reported *to the police station Section 8, Illustration (k) Sec. 32 Cl. (1)* and Sec. 157 of the Indian Evidence Act were relied upon The Judge over ruled the contention

The approver wrote a letter from Burdwan The prosecutors wanted to put that in—the defence objected to it on the ground that it is not admissible in evidence In Sec 17, Indian Evidence Act, admission has been defined. The letter is a document—it is not an admission within the meaning of Sec 18, Indian Evidence Act. It can alone be

proved against the approver Sec 21 Cl (1), Indian Evidence Act does not apply because it cannot be relevant under Sec 32, Indian Evidence Act. Cl (2) does not apply because it does not state any thing about any state of mind or body Cl 3 would have been applicable if Sec 10 of the Evidence Act was applicable But as Sec 10 was not applicable, Cl (3) can not help in any way A statement is not admissible in favour of the person making the same unless it comes under Sec 32 or Sec. 157 of the Indian Evidence Act Sec 157 must be read with Sec 5 of the Evidence Act It is neither a relevant fact nor a fact in issue The Judge over ruled the contention of the defence

It took a long time to finish the Examination in Chief and the cross examination of the approver During the cross examination of the approver—his statement before the police was supplied to the defence in accordance with Sec 162, Cr P C The approver was also cross examined with reference to such statement

After the approver's evidence the verifying Magistrate was examined by the Prosecution The leader of the defence mentioned that **the verification proceedings are illegal No section of the criminal Procedure Code authorises such a procedure Taking for granted that such proceedings are not wholly illegal so far as the police work is concerned, the statements made to the verifying Magistrate in course of such proceedings are inadmissible** The following are the cases in support of the above proposition of law

(i) 7 C W N 220

(ii) 15 C W N 593

(iii) 22 C W N 593

If the verification proceedings and the statements made before the verifying Magistrates are admissible then the brief of the public prosecutor and the instructions given to him will be admissible

The Judge declined to mark the report of the verification Magistrate After the examination and the cross examination of the verifying Magistrate all other witnesses were examined and cross examined

Thereafter the examination of the accused duly recorded by or before the committing Magistrate was tendered by the Public Prosecutor and read as evidence The evidence of some of the witnesses duly recorded in the presence of the accused by the committing Magistrate was treated as evidence in the case The accused were all one by one asked questions whether they are willing to make statements explaining the circumstances appearing in the prosecution evidence against them They made certain statements the gist of which is given in the heads of charge The accused persons were then asked whether they meant to adduce evidence All of them said that they did not want to adduce any evidence The Public Prosecutor then summed up his case He began his arguments on the 1st May 1925 and closed the same on the 27th May 1925. The leader of

the defence opened his case, stating the facts or law on which he intends to rely and making such comments as he thought necessary on the evidence for the prosecution He began to sum up his case on the 18th May 1925 and closed his summing up on the 4th June 1925 As no evidence was adduced on behalf of the defence, the prosecutor had no right of reply It was, at first, thought that the Jury should view the places in which the offences charged were committed but the Judge thought it unnecessary for the purpose of the present case The Judge charged the Jury on 12th 15th, 17th, 20th, 24th, and 25th June 1925 during the usual court hours but the charge was not finished He began to charge the Jury on the 26th June from 11 a m and continued it till 11 15 p m when the charge was finished

It is the duty of the Judge (*a*) to decide all questions of law arising in the course of the trial and especially all questions as to relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties, and in his discretion to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties, (*b*) to decide upon the meaning and construction of all documents given in evidence at the trial, (*c*) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given, (*d*) to decide whether any question which arises is for himself or for the Jury, and upon this point his decision binds the Jurors The Judge in course of his summing up expressed to the Jury his opinion upon the questions of facts He mentioned about the reliability of witnesses and about the guilt of the accused He also asked the Jury to form their own opinion (I L R 10 Cal 970) The Judge delivered his charge with sufficient fulness to the Jury and in such a way as to enable one to say that all points of law and fact were clearly and correctly explained to the Jury having regard to the evidence adduced in the case See 51 C W. N 357, 54 Cal 698

I propose to append to this book the materials which contains the synopsis of the entire evidence that could be found in the records of the Alipore Sessions Court as well as of the examination of the accused persons Although the Judge expressed his opinion on questions of fact, sometimes very strongly, one cannot think it to be influencing the Jury so that their function might be reduced only to register the opinion of the Judge and bring in a verdict according to his idea. See 31 C. W. N 851 Strictly speaking there was not the slightest misdirection The charge was entirely in favour of the accused persons. The heads of charge entirely adopted the arguments of the defence

After the Judge finished his charge the Jury retired to consider their verdict. They retired at 11-45 p m on the 26th of June 1925 and delivered their verdict at 4 a. m on the 27th of June The Jury were locked up

during their deliberations It is duty of the Jury (a) to decide which view of the facts is true and then to return the verdict which under such view ought according to the direction of the Judge, to be returned, (b) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not, (c) to decide all questions which according to law are to be deemed questions of fact, (d) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure or unless their meaning is ascertained by law in either of which cases it is the duty of the Judge to decide their meaning

Difference between Mofussil Sessions trial and High Court Sessions trial —

Practically speaking there is no difference Only matters in which there is a difference are as follows—

High Court	Mofussil Court
(1) All trials before a High Court are by Jury	(1) All trials before Mofussil Courts are either by Jury or with the aid of assessors
(2) In trials before High Court when it appears to it at any time before the commencement of the trial of the person charged that any charge or any portion thereof is clearly unsustainable, the Judge may stay proceedings upon the charge or portion of charge	(2) No such provisions in mofussil
(3) In trials before the High Court the Jury consists of nine persons	(3) In Mofussil Courts the Jury consists of such uneven number not being less than five or more than nine as the Local Government may direct Provided that in capital cases the Jury shall consist of not less than seven persons and if practicable of nine persons
(4) In capital cases and in cases where Judge so directs the trials shall be by a special Jury	(4) In any district for which the Local Government has declared that the trial of certain offences may be by special Jury the Jurors shall in any case in which the Judge directs be chosen from the S[illegible] Jury list

High Court	Mofussil
(5) Objections to a particular Juror shall be allowed to number of eight on behalf of the Crown and eight on behalf of the accused without any ground whatsoever	(5) In Mofussil no objection to a Juror is allowed without any of the grounds mentioned in Sec 278 Cr P C
(6) When in a case tried before High Court the Jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees the Judge shall give judgment in accordance with such opinion When in any case the Jury are satisfied that they will not be unanimous but six of them are of one opinion, the foremam shall so inform the Judge If the Judge disagrees with the majority, he shall at once discharge the Jury If there are not so many as six who agree in opinion the Judge shall, after the lapse of such time as he thinks reasonable, discharge the Jury	(6) If in any case before the Mofussil Court the Judge disagrees with the verdict of the Jurors or of a majority of the Jurors on all or any of the charges on which any accused person has been tried, he shall refer the case to the High Court
(7) The clerk of the Crown shall prepare the list of common as well as special Jurors.	(7) Sessions Judge and the Collector of the District or such other officer as the Local Government appoints in this behalf, shall prepare the list of Jurors
(8) The Advocate General may stay proceedings	(8) No such provision in Mofussil
(9) The Chief Justice shall appoint time of holding Sessions	(9) No such provision in Mofussil
(10) The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor General in Council in the case of the High Court at Fort William or the Local Government in the case of the other High Courts may direct	(10) No such provision in Mofussil

High Court.	Mofussil
(11) The Chief Justice shall notify beforehand in the Local Official Gazette of all sittings of the Criminal Session intended to be held	(11) no such provision in Mofussil

The result of the Sealdah Gang case was some of the accused were convicted and others were acquitted The convicted persons preferred an appeal to the Hon ble High Court and the appeal was dismissed

(b) Pakur Case—Case against Dr Sivapado Bhattacharyya —

Mr T H Ellis, District and Sessions Judge, Alipore heard the case with the aid of Jurors Many eminent advocates appeared on behalf of the several accused in the case Dr Sivapada was represented by Mr P N Banerjee, Advocate

Facts—Rani Suryabati of Pakur had a separate estate with an income of Rs 20 000 annually She had brought up Amarendra who had lost his mother in his infancy On the death of his father, Amar prosecuted his studies at Patna while Benoy managed the estate Benoy was irregular in remitting money to Amar, so Rani Suryabati supplemented in Amar had passed the intermediate examination in arts and decided to read for the B A degree After the death of Benoy s father, Rani Suryabati lived away from Pakur as Benoy took a woman there and accommodated her During Pujas in 1932 Amar was at Deogarh where Benoy also came They together went out for a walk Benoy left the same night Four days later Amar s eyes were affected his face became crooked his lips twisted and he could hardly speak A doctor opined that the case was one of tetanus Rani Suryabati wired to Benoy at Calcutta to bring the family physician He brought Dr Taranath instead Rani Suryabati grumbled why no eminent physician was brought Under the treatment of a local doctor, Amar gradually recoverd Benoy without being asked brought Dr Dhar from Calcutta who gave an injection which made Amar s condition worse His condition became critical at night Dr Dhar left the next day Amar gradually recovered under the treatment of a local doctor, but Benoy again unasked brought Dr Dhar and Dr Sivapada from Calcutta for Amar s treatment Amar was brought to Calcutta and recovered after a long time the expenses of treatment amounting to Rs 15 000 A sinus appeared where Dr Dhar had given an injection After this affair Amar contemplated a partition of the estate Some time after Amar was brought to Calcutta by a f wire sent in the Rani s name While going back to Pakur with Suryabati at Howrah station Amar was given a pin prick by an person He went away to Pakur but came back to Calcutta to

blood examined When Rani was brought to Calcutta by a wire she found Amar laid up with fever and swollen arms He was under the treatment of Dr L M Banerjee and Dr B C Roy but Amar died, Dr Banerjee asked her to inform the police, but she did not as it might upset Amar

Dr Sivapada amongst others was charged with conspiracy to murder. *The whole case could not be discussed here as the case of some* of the accused is subjudice pending in appeal before the Calcutta High Court

The cross examination of some witnesses has been given in the chapter on cross examination In addressing the Jury Mr P N Banerjee, Advocate of Dr Sivapada referred to the discussion that took place between Dr Sivapada Bhattacharjee and Dr Harihar Banerjee at the Medical Supply Concern about plague bacilli and said that in the course of the conversation both of them said that they did not know about the effect of the plague bacilli Subsequently Dr Sivapada told Dr Harihar Banerjee that he came to know of it from the expert opinion gathered by the Police The prosecution suggested that Dr Sivapada became afraid when he heard about the arrest of Dr Taranath and on the very day he heard of it he ran to the Medical Supply Concern and in course of making investigation he started this conversation with Dr Harihar Dr Sivapada was a co-conspirator and he went to the Medical Supply Concern apprehending danger

To meet that argument the defence Advocate said that he went to the Medical Supply Concern on the 18th of February and on the 1[illegible]th February in the afternoon police collected expert opinion on the plague bacilli It might be probable that Dr Sivapada came to know of it and told this fact to Dr Harihar in the course of the conversation that took place between him and Dr Harihar on that day

Mr. Banerjee next referred to the evidence of Rani Jotirmoyee who said that on the 11th of February Dr Sivapada had been to her place for treating a patient After examining the patient when Dr Sivapada was leaving the place Rani Jotirmoyee asked him as to the cause of Amarendra's death and Sivapada told her that it was a pure case of murder although Dr Sivapada said he did not tell anything to Rani Jotirmoyee Mr Banerjee said that it might be probable that Dr Sivapada after coming to know that B. Pestis was found in the blood of Amarendra from the blood culture report he might have recalled in his mind the symptoms which he had noticed in Amarendra's system during the time he was lying ill

Continuing Mr Banerjee said that it was definite that up to that time B Pestis was not detected in the blood of Amarendra Dr Sivapada was not aware that there was a single case of plague in Calcutta Dr Sivapada said the defence Advocate, was arrested on the 2[illegible]th March and this story of B. Pestis came out through Rani Jotirmoyee Collecting together all these circumstances Mr Banerjee remarked that her evidence was not reliable

Dr Sivapado in his statement said that he went to the Medical Supply Concern on the 18th of February and the Public Prosecutor said that it was very suspicious on the part of Dr Sivapada to go to the Medical Supply Concern and that clearly proved that he went there on receipt of the information of the arrest of Dr Taranath because he had apprehended danger.

Mr. Banerjee in his defence said that on the morning of that day he came to know through phone that Dr Taranath and Dr Dhar had been arrested in connection with Pakur Case He also came to know that they were arrested in connection with the death of Amarendra Pande who was injected with plague bacilli When he heard that story he must have recalled in his mind about giving a letter of introduction to Dr Taranath who said that he required it to go to Bombay Dr Sivapada must have failed to recall in his mind whether he had given him any letter of introduction at all which was not at all unnatural for a busy doctor like him who had to attend multifarious business It was very natural for an honest and innocent man to think like that although the prosecution made much about it With a view to have light on the point Dr Sivapada went to the Medical Supply Concern to enquire about Dr Taranath He was an honest man and that was the reason why he voluntarily told that fact to Dr Harihar Banerjee at the first instance he met him at the Medical Supply Concern Dr Sivapada, said Mr Banerjee could easily keep it in secret if he was a conspirator and would not have gone there and voluntarily disclosed these facts to Dr Harihar Banerjee

One of the questions that was put to Dr Harihar Banerjee was whether Dr. Taranath had gone to Central Province and Bombay Was it the conduct of a co conspirator? Could that question come from a man who is alleged to be a conspirator? The answer would be no, never On the other hand that showed that Dr Sivapada was out of touch with Dr Taranath for a long time It was natural for an honest and innocent man to go to the Medical Supply Concern to enquire about Dr Taranath on the day he heard about his arrest The above circumstances, said Mr Banerjee conclusively proved that his client was not guilty of conspiracy

Proceeding the defence Advocate said that the Public Prosecutor suggested in his argument that Dr Taranath going on the 13th November to the house of Dr Sivapada at midnight proved that Dr Sivapada was in conspiracy with Dr Taranath Public Prosecutor in support of his argument said if he was not a conspirator why Dr Sivapada allowed this man going to his house so late at night?

To meet that suggestion made by the prosecution Mr Banerjee said that Dr Harihar Banerjee in his evidence said that Dr Sivapada told him that on the day as mentioned by the prosecution Dr Taranath came to his house in connection with his wife's illness but he did not come down to meet him as he was tired and indisposed If Dr Sivapada knew that

he was a conspirator he would not have told this fact to Dr Harihar Banerjee This discloser before Dr Harihar Banerjee clearly proved that his client was not a conspirator

If Dr Sivapada was in conspiracy to kill Amar Pandey he would naturally know that Amar was injected with plague bacilli at the Howrah Station Certainly he would have known from what Amarendra was suffering If he was a conspirator certainly he would not have disclosed these facts to Dr Harihar Banerjee and others to risk danger On the other hand he would have kept everything in secret for his safety

Proceeding, Mr Banerjee said that another circumstance in favour of Dr Sivapada was that when he went to see Amar at his death bed he did not take any precaution for his own safety It was alleged that he was in the conspiracy If so, he must have known that Amar was suffering from plague He not only took any precaution but, according to evidence even sat on Amar's bed He must have known that it was a very risky thing. All this showed that he did not know that it was plague. No doctors did

The evidence further was that Dr Sivapada was an M D, a professor of the Tropical School an eminent doctor having an extensive practice and a house in Calcutta Considering his status education culture and position in society, was it likely that he would risk his fair name and reputation by entering into a conspiracy to kill Amar against whom he had no grudge? What was the price paid? There was no evidence that any cheque or money had been paid to him nor was there any evidence that about that time Dr Sivapada had deposited a big amount in the bank Even if it was assumed that every man had its price a good part of the Pakur Raj estate was necessary to buy up a man of the position of Dr Sivapada It was an astounding proposition

Mr Banerjee next submitted that if there was a conspiracy, there must have been association between him and others during the period of conspiracy In May 1932, it was said that Dr Taranath made frantic efforts to get plague culture from the Haffkine Institute of Bombay Later, Dr Ukil brought a tube of plague culture for him About a year later, this Dr Ukil also gave him a certificate although he denied it in lower court. If he had admitted it, Dr Sivapada would have been saved from the worry and anxiety of this trial because the erroneous belief that it was he who gave the letter which Benoy carried to Bombay was responsible for his arrest.

Dr Taranath was himself a bacteriologist and he had the help of such an eminent bacteriologist as Dr Ukil Where then was the necessity for Dr Taranath to consult Dr Sivapada about the virtues of plague bacilli? Where was the evidence to show that Benoy approached him for learning the virtues of different culture? There was no evidence to support the allegation that his was the skilled brain which played the part in the conspiracy by selecting the plague culture as other kinds of bacteria would not

do. That was the early part of the conspiracy The second stage was the Deoghar visit. What did he do there? Would he do and say things which would save the victim of his alleged co-conspirators? Was that the way in which he helped his co-conspirators?

The third stage was the certificate which he gave to Dr Taranath The prosecution might argue with some reason if that letter had been carried by Benoy to Bombay But there was no evidence that Dr Sivapada's letter had ever been used which only showed that it was a worthless letter not fit to be used If they were in conspiracy would Dr. Sivapada give such a colourless letter or would they accept such a letter? It only proved that there was no conspiracy

What took place on December 2, when Dr Sivapada went to see Amar and the subsequent events were isolated acts having no connection with the conspiracy It was by the merest chance that Dr Sivapada was summoned to Amar's death bed It was again pure accident that Amar's relatives went to him for a death certificate They might as well have gone to Dr G S Chatterjee for it There was also no evidence that the conspirators manœuvered in such a way as to leave no option for Amar's relatives but to call him

What did Dr Sivapada do when he went there, asked Mr Banerjee The first thing he suggested was that blood should be examined He was told that blood had already been taken by Dr Gupta for examination If he was conspirator, he would not have made such a suggestion Because he would be the first person to avoid it, lest it would reveal the presence of plague bacilli which, as a conspirator, he must have known, would be found in Amar's blood There was also no evidence that, knowing that the blood had been taken for examination, he tried to influence Dr Gupta who was a junior in the same school in which he was a professor Dr Gupta said that Dr Sivapada never saw him in December Nor was there any evidence that he tried to tamper with the unlocked incubator in the school in which Amar's blood had been preserved Piercing together all these circumstances and having regard to the fact that he never tried to see Dr Gupta, the inference was irresistible that Dr Sivapada was never in the conspiracy

It was also significant that on March 6 last Dr Sivapada was not arrested although the police had all the facts before them They knew that Dr Sivapada had given the death certificate and had failed to inform the police These facts were not sufficient. On march 6, he admitted that he gave a letter to Dr Taranath He was not conscious what trouble he was bringing upon himself by making this admission The police at once came to the conclusion that this was the letter which had been carried by Benoy And therefore Dr Sivapada had helped them in the conspiracy He was arrested In the lower court, Dr. Ukil said that he did not give any letter to Dr Taranath. Dr Naidu

could not remember who was the author of the letter brought to him He remembered that it was an eminent Calcutta doctor who was attached to an institute That exactly fitted in with the description of Dr. Sivapada and he was arrested In the Sessions Court, Dr Nath remembered that it was his professional friend Dr. Ukil who gave that letter Dr Taranath also admitted that Dr Ukil gave him that letter This was a bomb shell to the prosecution case And next they came with the explanation that Dr Sivapada must have been bribed to give the death certificate There was not a tittle of evidence to support this belated explanation of the Crown

In order to come to the conclusion that Dr Sivapada had caused the disappearance of the evidence of murder and had omitted to inform the police the jury would consider what was the material before Dr Sivapada at the time he gave the death certificate There was only a vague surmise of Amar who said that he felt a pin prick None of the doctors who attended Amar, did believe the story Even his relatives did not believe it as would be apparent from the fact that they asked for the death certificate If Dr Sivapada along with other doctors did not believe in the story, he did nothing wrong Even when some of the doctors came to know that plague had been found in the blood, they did not inform the police Each of the doctors saw and heard what Dr Sivapada saw and heard

Rabi now said that he was overwhelmed with grief and so he did not inform the police However much he said now that was no reason why he could not inform the authorities In every murder case, the relatives felt grieved But they did inform the police all the same. If he believed in the story why did he send for a death certificate? His conduct showed that he himself did not believe the story

Mr Banerjee in the course of his address said that towards the conclusion of the prosecution address that what Dr Sivapada heard and saw he had reason to believe that it was a case of murder and there was sufficient evidence showing that the death of Amarendra was caused by murder

With regard to the first item, said Mr Banerjee that he would draw the attention of the Jurors to the three distinct reports he had before he had issued the certificate Patindra Pandey, one of the important members of the family, said that nothing had been found in the blood culture Then he was requested by Provash M[illegible] to give a death certificate and those reports came to him before [illegible] [illegible] the death certificate.

With regard to the report of Patindra [illegible] [illegible] that Patindra himself said in his evidence [illegible] [illegible] Santosh Kumar Gupta who had taken the [illegible] [illegible] quired about the result He [illegible] said in his [illegible] [illegible]

told by Dr Santosh Kumar Gupta that no growth was showing in the blood culture Then again Captain Chatterjee who proved in his evidence that Rabindra told him that nothing was found in the blood

In that connection he said Rabindra Pandey was re examined by the prosecution and Rabindra in re examination stated that no poison was found in blood

Proceeding the defence Advocate stated that from evidence on record there was clear proof that in the case of ordinary diseases such as malaria influenza typhoid etc if the blood was taken for culture growth was visible between 48 and 72 hours Dr Santosh Gupta also said that in case of malaria they could give the report then and there In case of typhoid it takes about three days but influenza takes a long time because it was a slow going germs

Dr Sivapada grew suspicious no doubt when the pin prick incident at Howrah Station was reported to him and as a doctor he was looking forward for the result of the blood culture He was very much anxious for the blood culture report because he thought the blood culture report would help him in treating the patient So Dr Sivapada was expecting that the blood of Amarendra would show some growth between 48 and 72 hours before he had heard the result of the blood culture

Exactly after the lapse of 72 hours Rabindra Pandey gave Dr Sivapada the report saying nothing was found in the blood

Dr Sivapada was satisfied because he thought that the blood has been cultured by an expert hand and from such a big institution and therefore naturally concluded that it was the final report

He naturally came to the conclusion that Rabindra Pandey who was taking so much interest in Amarendra s welfare must have given him a correct report and therefore he had no hesitation in giving the death certificate

He saw the symptoms of plague but still he could not conceive the idea of plague on the face of the blood culture report as he had heard from Rabindra Pandey

Under these circumstances it could not be said that Dr Sivapada had reason to believe that the death was caused by murder

Mr Banerjee said that the last circumstance which went greatly in favour of Dr Sivapada was that on December 4 Benoy went to Dr Aswini and asked him about the name and address of the doctor who had taken the blood of Amar and if anything was found in the blood These were the things which were already known to Dr Sivapada If they were in the conspiracy Benoy might have known these things from Dr Sivapada. The very fact that Benoy went to enquire about these things showed that he was unaware of these details That conclusively proved that Sivapada was not in the conspiracy

The supreme question for the Jury was whether Dr Sivapada was in the conspiracy. The evidence showed that there was not the remotest likelihood of his being in the conspiracy If he was not a conspirator, what was his motive in suppressing the information from the police? For whose benefit would he do it? Why should he perversely disbelieve the story of the pin prick? If he disbelieved it, it must be for other reasons. It was not in this court that he for the first time said that he suspected no foul play On February 13, when he was a free man and there was no talk of his arrest he told the police about it. It could not therefore be said that it was a belated defence

Concluding Mr Banerjee said ' Can you lay your hands on your breast and say with satisfied judgment and clear conscience that Justice demands of you to say that the charges against Dr Sivapada have been proved? Remember that before you make up your minds against my client on any of the charges Remember that before you brand this healer of men as a killer Remember that before you make a clean sweep of a brilliant career like his Remember that also before you deprive the community of his humane services, before you deprive parents of their son, wife or her husband and children of their father and finally before you knock him down from the sacred and exalted chair of the teacher You must be conclusively satisfied beyond all shade of reasonable doubt that you are not setting up a dangerous precedent by convicting on airy nothings

"Remember gentlemen," said Mr Banerjee, ' that your supreme duty is to rise above the prevailing atmosphere of prejudice, suspicion and sensation because once your verdict has gone forth there is no going back upon or rectifying it however much you may regret or repent later Remember that suspicion never supplies positive evidence nor do presumptions supply legal proof

' If you remember this while deliberating in your retiring chamber, you can come to but one verdict regarding my client and that is one of not guilty And because I believe that, I feel that the longer I speak to you the better are the chances of my convincing you of his innocence.

I am deeply conscious of a personal interest in your verdict for if it were an unfavourable verdict, I could attribute it to no other cause than my own inability to conduct the defence and I feel persuaded that if it were so the recollection of this case will haunt me as a dismal and blighting spectre to the end of my life

' Dr Sivapada Bhattacharya is innocent May his judges declare it in no uncertain terms so that he may leave the court without stain on his character This is my earnest appeal to you. May it find a response in your hearts."

The jury returned an unanimous verdict of not guilty so far as Dr Sivapada was concerned. Dr Sivapada was acquitted.

CASE AGAINST MR N R SARKAR

Full Text Of Hon ble S K Sinha's Judgment

Following is the text of the judgment of the Hon ble S K Sinha in the case against Mr Nalini Ranjan Sarkar —

The principal characters in this case of alleged adultery are Pramatha Nath Sircar, aged 36 a Brahmo by persuasion and a professor of Economics on a salary of Rs 110/ per month in the first grade College at Feni in the district of Noakhali, his wife Bina now aged 24, a graduate of the Calcutta University, daughter of Babu Nagendra Kishore Biswas a clerk in the office of the Director of Land Records, Alipore residing at 1 Dr Brojendra Road, Bhowanipur, the accused Nalini Ranjan Sarkar aged 56, Mayor of Calcutta and the head of the Hindustan Insurance Co a widower, without children, living alone on the top floor of the Hindustan Buildings he is the first cousin of Bina s father Nagendra Biswas, their mothers being sisters, Bina calls him Bara Kaka, amongst Bengalis the relationship is reckoned as that of uncle and niece but really nothing more than that of second cousins, there would have been no bar to their marriage under the Civil Marriage Act 1873 The complainant Pramatha Nath Sarkar and Bina Biswas were married under the Civil Marriage Act on October 4 1929 in the Brahmo Samaj prayer Hall at Bhowanipore

Story of the Case

The present case was instituted in the husband s complaint on February 25, 1932 some eight months after he discovered them in the act of adultery on June 17, 1931 in the accused s residence in the Hindustan Buildings This unusual delay in coming to Court will need further consideration in due course The principal allegations made in the petition of complaint must be set out here for comparison with the facts appearing in evidence At the time of the marriage Bina, then aged 19 was a student in the second year class of the Diocessan College Calcutta The complainant says he agreed that even after marriage she should continue to live with her parents in Calcutta and proceed with her studies, that she passed the Intermediate Arts Examination in 1930, while he would have to go to Feni Immediately after the wedding he took her to his family house at Krishnagar where his mother and sisters live She stayed there for a week, occupying the same bed room but there was no consummation of the marriage, on account of her objection She returned to Calcutta and after staying on for a month at Krishnagar till the end of the Pujah vacation he returned to his duties at the Feni College On several occasions he came to Calcutta and put up at his wife's parents' house but she was always cold and indifferent and there was no inter course The accused was a · and regular vis tor to the house, Bina was always very attentive and often used to go out in his motor car, on enquiry he learned that

used to visit his flat About six months after the marriage, in April or May 1930, a professor in the Feni College gave him a book called The Recollections of Romesh Dada" (an obscene book, the publishers of which were prosecuted and sentenced to imprisonment in 1931), there was some reference in it to the accused s character and this first roused his suspicions regarding his wife s relationship with the accused As she continued to refuse him his marital rights, he questioned her as to whether her affections were elsewhere she refused to reply On another occasion, when pressed again she agreed to perform her wifely duties provided he used contraceptions this made him still more suspicious and he asked how she came to have any knowledge of such things, her reply was—"from friends," without disclosing any names Towards the end of 1930 her parents wrote to him at Feni that Bina was in indifferent health and required a change, she might be sent to Kishoreganj (Mymensingh) to stay with her uncle Debendra Kishore Biswas and his family, to which suggestion he agreed Instead of going there, however, she went off alone with the accused to Delhi in January 1931, without her husband s knowledge or consent and spent three months there with the accused living alone with him in a house rented by him and at his expense, they returned to Calcutta together on 14 4 1931 travelling in the same compartment, marked reserved for Mr and Mrs N R Sircar

Husband s Suspicion

The complainant came to Calcutta from Feni when his college closed for the summer vacation in April, after staying at No 1, Dr Rajendra Road for a few days, he took his wife to Krishnagar She still refused to be a wife to him, he says he noticed physical changes in her, though he had never had intercourse with her and he sensed something wrong One evening he forced her to have intercourse and found she was not a virgin On being questioned, she refused to reply and became angry, on his persisting and demanding an explanation, she admitted that at Delhi she had slept with the accused He however, forgave her When he returned to Feni at the end of the summer vacation of 1931 she refused to go with him and against his wishes returned to stay with her parents in Calcutta and began her studies for the B A having passed her I A in June or July Shortly after that, he stopped sending her money to pay her College fees which he alleges, were paid by the accused In the summer of 1932 she took her degree, as a result of his protests to her parents, she agreed to join him at Feni On her arrival, he says he noticed certain physical changes in her which led him to suspect that she was pregnant and he arranged that they should occupy different bed rooms. After two or three months his suspicions were confirmed on his taxing her she fell at his feet and with tears in her eyes admitted that her Bara

Kaka was responsible for her condition that he had also debauched her two young sisters and his own younger brother's wife except that with them he had used contraceptives whereas with her he had taken no such precautions she begged for forgiveness and besought him not to publish her shame on promises of being a faithful wife in future he forgave her and consented to treat the child as his own The child was born at the Chittaranjan Seva Sadan Hospital in Calcutta on 13 8 1933 the accused reserved a room for her and paid the confinement expenses

Hindusthan Building Incident

While the complainant was on a holiday in Calcutta during the summer vacation of 1934 an acquaintance Benode Behari Biswas went to him one evening and asked for an introduction to the accused with a view to securing the agency of the Hindusthan Insurance Co for the district of Nadia, his home being in that district The complainant agreed and on 17 6 34 he took him to the accused's flat in the Hindusthan Buildings, on entering the accused's bedroom he found, to his horror, his wife and the accused lying naked in bed in each other's arms the accused went into the bathroom and closed the door his wife got furious and ordered him to go out of the room he thought it useless to protest in view of her attitude and he and Benode Biswas left the place He consulted his brother in law Bibhuti Bhusan Sircar who however advised him to do nothing hastily and returned to Feni at the end of the summer vacation, on June 30th He next came to Calcutta during the Pujahs and as the result of another family conference he inserted a notice in the Statesman in October to the effect that his wife having left his protection, he was no longer responsible for her debts He also wrote a registered letter to his wife which was refused and returned to him On February 22nd 1935 he came to Calcutta to attend an Examiner's meeting His brother-in-law Bibhuti showed him an article entitled "After 17 years' in the 'Kheali' of February 7, in which his wife's name was coupled with accused's in no flattering terms and advised him to take proper action, as *the matter had become a public scandal The complainant says that* he went to a certain firm of Solicitors with a view to instituting divorce proceedings their advice, however was to bring a criminal case against the accused and the complainant allowed himself to be guided by them At the time of presenting the complaint, he produced some 20 letters *written by his wife to him, one of them, from Delhi, was to the effect that* she was sleeping on the verandah with Bara Kaka. The complainant's lawyer also undertook to prove from the Railway records that accused and Bina Sircar travelled together from Delhi to Calcutta on April 11 or 1 , 1931 in a compartment marked reserved for Mr and Mrs N R. Sir *also from the records of the Chittaranjan Hospital that the accused* gaged a room there and paid for Bina Sircar's confi

Application was also made for search of accused's flat and Bina's room in her parent's house for letter and her papers No warrant was taken out for search of the accused's house. In Bina's room, on search by the police was found her private diary The hospital sent certain registers and bed head tickets which did not bear out complainant's allegations and have not been tendered in evidence The Railway authorities wrote that the records of reservation in 1931 had been destroyed under the rules On these allegations process was issued against the accused to answer a charge of adultery The oral evidence in the case is that of the complainant himself his wife who was summoned as a court witness, Badiuzaman a motor driver of the late Raja Bejoy Singh Dudhoria who deposes to intimacy between accused and Bina Sircar at Delhi Mr Shamsuddin Ahmad an Advocate of the Calcutta High Court and elected Councillor of the Calcutta Corporation, who proves Bina's residence in accused's house at Delhi Benode Behari Biswas, brother in law of the complainant who is said to have accompanied him to the accused's residence on June 1st 1934 and seen the accused and Bina Sircar in a compromising position Bibhuti Bhusan Sarcar another brother in law of the complainant who acted as his friend guide and philosopher and at whose instance complainant decided to take legal action against his wife and the accused, and Bimalendu son of Bibhuti who is said to have kept a watch on Bina Sarkar's movements from October 1933. There is in addition documentary evidence relevant to the issue in the shape of Bina's letters to her husband which he has produced she having waived her statutory privilege under the provisions of Sec 122 Evidence Act There is also available Bina's personal diary which was found in her room in her parents' house was searched by the police at the instance of the complainant. Finally there are complainant's letters to his wife. A word of explanation is necessary to show how they came to be produced in this case. Bina says that she made them over to her father in October 1934, after her husband issued that notice in the 'Statesman' with a view to taking legal advice. her father made them over to a lawyer They have been produced in this court from the custody of the accused How he came to be in possession of them is not explained Bina is unable to offer any explanation It is I think reasonably obvious that either Bina or her father made them over to the accused for the purposes of his defence. The matter might not have been worth mentioning if it were not far from the fact that these letters were the cause of quarrel in June 1934—according to the complainant on June 14 but according to his wife on June 23—which led to the final rupture between them Complainant says that he came to Calcutta on or about June 11 and put up at 1, Dr Rajendra Road, there was a quarrel two or three days later and his wife ordered him to leave the house. The occasion of the quarrel is tolerably clear, he says he was reading his wife's personal diary and her letters when she

came in, flew into a rage and told him to clear out Her version is slightly different, in her absence her husband abstracted from her box his letters to her and put them in his own box she took them back hence the quarrel She admits having told him he could clear out It is therefore obvious that she set great store by her husband's letters to her Extending over a period of 4 years from 1930 to 1934 she could not have set so great a value on them because of her affection for her husband not because of the tender sentiments expressed in them for the passages in her diaries which will be quoted at some length presently show conclusively that within the first year of her married life she expressed the most unwifely sentiments towards her husband her reflections as recorded in her diary show that she regarded her husband with great disfavour and distaste and the marriage as a vast failure and herself as a most unfortunate woman Another of her reflections also noted in her diary, as far back as 1930 relates to the vital necessity of her continuing with her studies and qualifying herself to earn her own living if the occasion and necessity should arise It has therefore no sentimental value attaching to her husband's letters that led to the furious quarrel in June 1934 when she found he had taken them from her box in her room

Magistrate's unenviable Task

I find myself in the unfortunate position of having to act as the biographer of the married life, such as it was of the professor and his wife Although the principal incidents on which complainant relies to prove his charge of adultery are three viz, his wife's visit to Delhi alone with the accused the birth of a male child to her on August 13, 1933 and the incident of June 17 1934 at the accused's residence, it becomes necessary to consider the circumstances, under which each of those events occurred and that entails a review of the whole of their married life extending from October 1929 to June 1934

The complainant first met Bina Biswas in the house of a certain gentleman in Calcutta in April 1929 and the marriage was arranged by a daughter of the gentleman, the proposal was first made by the girl's parents and the complainant expressed his readiness through that lady; he proposed to Bina herself in May and for her acceptance there was a formal engagement in that month In July or August she changed her mind and wished to break off the engagement, she gives no particular reason for that desire but says she did not approve of his attitude in certain matters which she has not specified She says the complainant reasoned with her and talked her round and she withdrew her objections. The marriage took place at Bhowanipore, under the Civil Marriage A on October 4 1929 She denies her husband's allegations that marriage has not duly consummated and declares that she was a him, in the full sense of the word, from the beginning He personal

however discloses her real sentiments about marriage in general and her own married life in particular I shall quote four passages from her diary to illustrate the point —

(i) Entry of 14 4-1930 — 'To all appearance I am a married woman They say that marriage brings about a complete change in human nature In myself I find not the least change There is no love in my heart my life is a failure I realise that all human desires are not capable of fulfilment I had so many hopes and aspirations, all are now gone My soul is desolate I am full of regret that I could not make one other human being happy, all his life he will be haunted by regret that marriage brought him no happiness What shall I do? To make him happy means a great loss to me It is I who am to blame I should have refused to marry him'

(ii) 18 9 1930— Our College closes on Friday We get a month s holiday for the Pujahs Must I go to 'that' Krishnagar again ? '

(iii) 24 9 1930— I have often mused of my husband and his home but it is not a picture of happiness and there is no hope I felt how dreary my life is Yet I have affection kindness, love, womanhood in me I have them all But there is no one to bestow them on By marriage I gained nothing and lost much

(iv) 25 10-1930— I often wonder why God inflicted such a marriage on me I felt no attraction to my husband. I thought it would come after marriage but the opposite is happening

Unhappy Married Woman

Clearly this is the diary of an unhappily married young woman The cause of her regret and unhappiness is not clear When questioned on the point she ascribed two reasons which appear to me to be wholly inadequate on view of the very strong feelings she expressed in her diary These reasons given are (1) her huband s unwillingness that she should continue her studies in Calcutta (2) the unkind treatment she received in her husband s house at the hands of his mother and sisters Her husband does indeed state in evidence that after passing her I A Examination in June or July 1930 he did not desire her to go on with her studies but wanted her to go and live with him at Feni There are however several letters of his which show the contrary, they show that he was quite willing that she would live with her parents and study for the B A As for his mother's unkindness to her, her own diary shows it is not true On one occasion she did note in her diary that in her husband s home she always felt rather a stranger though her mother in law was very attentive to her comforts This does not prove unkindness to her her feeling of not belonging to her husband s home might have been due to something lacking in her The complainant now of course declares that she was all along unwilling to leave Calcutta because of her attach-

ment to the accused On the evidence I find myself unable to state with any degree of certainty the cause of her unhappiness and I do not prefer to offer any opinion on the subject But the fact remains that in the course of her married life she went to that hateful Krishnagar' three or four times and to Leni only once That she was unhappy and dissatisfied with her marriage which she regarded as a hollow sham and mockery is clear but that does not in itself prove that she was an unfaithful wife or in particular that she was unfaithful to her husband for the accused Her husband says in evidence in chief that he began to suspect his wife in April or May 1930 when he read 'Recollections of Ramesh Dada' but in cross examination he says he did not suspect her in 1930 but later That it could not have been so early as April or May 1930 will be evident from the fact that that obscene book was not published till September 1930, as appears from the Governmet Gazette of book publications Then there is his letter to his father in law (Ex I dated 1 10-30) requesting him to approach the accused with a view to securing him a good job in the accused s own firm or some other insurance company, on the ground that it would suit him to live in Calcutta and Bina could go on with her studies There is another earlier letter of his to his wife (Ex Q dated 11 7-1930), advising her not only to get admitted into the Diocessan College (she had by then passed her I A) but also giving her advice as to the subjects she should select On 13-10 1930 he wrote to his father in law— When Bina is so keen on studying for the B A in College I would not in spite of my own inconvenience stand in the way So when she wants to join college, let her do so" These letters written by the husband to Bina (which she prized so much, clearly show that not only did he consent to her going on reading for her degree which necessarily meant her staying in Calcutta with her parents, but that he was ever asking a favour of the accused It is obvious that either he did not suspect the accused at the time or if he did he was conniving at things His conduct was not that of a suspicious husband There was not a word of warning from him to his wife or to her parents not a threat to the accused who was admittedly a frequent visitor to the house

Chronological Events

We come now in the chronological order of events, to the first definite incident when adultery is alleged to have been committed not on a single occasion but over a period extending to three months It is an admitted fact that on January 26, 1931, Bina Sirkar left Calcutta alone with the accused, unaccompanied by any relation of either of them, for Delhi, that the accused rented a house there and Bina stayed in the house til April 14 or 15 when they returned to Calcutta Let us consider the w and the wherefore of this trip to Delhi So far as the accused is concerned, the matter is simple to determine, in his written statement he says had to go to Delhi with his staff in connection with the work of the

Banking Enquiry Committee, of which he was a member, Bina had been suffering from fever for several months from the middle of September 1930 and a change of climate was considered essential As neither her parents nor her husband had been able to arrange for the change, she accompanied him to Delhi at the suggestion of Dr Sisir Kumar Mitter (P W 3) of the Science College, Calcutta, whose wife Lily stands in exactly the same degree of relationship to the accused as Bina viz niece of second cousin, call it what one will Bina's evidence is that she was desperately ill at the time and her father despaired of her life, she herself thought the end was not far distant and it was her brother in law Dr Sisir Mitter who put forward the suggestion that she take the opportunity of going to Delhi with her Barakaka to recoup her health There is however, an entry made by Bina herself, in her private diary, on 29 1 1931 (which date shews it was made after her arrival at Delhi) which shews that neither Bina, nor her brother in law no her Barakaka has told the truth The entry runs as follows,— My kaka suggested I should accompany him to Delhi I laughed and said 'I have been to Switzerland in imagination, only Delhi remains (I take this to be meant as a brilliantly witty sally meaning that she thought she had about as much chance of going to Delhi as to Switzerland) One day Sisir Dada Babu came and said, I hear Barakaka will rent a house in Delhi for his stay there Why not go with him and recoup your health?' Two or three days later I said to kaka Take me with you to Delhi Speak to my father and write a letter to Feni (referring to her husband) That very day kaka spoke to father who said he had no objection but was afraid Promotha might object Nothing can be clearer, therefore, from this entry in her diary than the fact that it was the accused who first put into her head of her accompanying him to Delhi, that she accepted the idea with alacrity and followed it up with energy, not without anticipation of some objection on the part of her husband earning his livelihood at distant Feni That she was not in good heath at the time will appear from the following letters written by him to her had to her father —

(1) Letter of 13 10 1930 (Ex D) to his father in law 'Please let me know about Bina s health "

(2) Letter of 11 10 1930 (Ex F) to his father in law – I received both your postcards to day On hearing of Bina's state of health I am particularly anxious and sorry Under the circumstances, it is better for her not to come here (Krishnagar) where there is no good doctor Consult a good doctor and do as he advises You have written about a change I have absolutely no objection It she recoups her health I have no objection even to her attending College.'

(3) Letter of 19 10 30 (Ex I) also to his father in law — I am glad to hear Bina has got rid of her fever She is constitutionally weak and her health is not good

Letter to his wife, dated 5 11 30 (Ex 6) from Feni I arrived here yesterday I am missing you sadly you will not get well if you remain depressed Everyone advising an immediate change for you '

(5) Letter to his wife dated 19 12 30 (Ex K) ' advising her not to attend College to the detriment of her health

The complainant has stated in Court that as he was not in Calcutta at the time he cannot say whether she was really ill or how ill she was His case is that her illness was only a pretext to avoid going to him at Krishnagar and Feni and an excuse to go off to Delhi with the accused Assuming that she was really in need of a change the next question that arises is whether she went to Delhi with her husband's knowledge and consent She maintains it was and he denies it Before the idea of going to Delhi was put into her head by the accused as her own diary proves it was, there was some talk of her going to Kishoregunj Mymensingh to stay in the family of her uncle Debendra Kishore Biswas, there was some idea of her going to another uncle at Moulmein In evidence in this Court Bina has stated that she could not go to Kishoregunj because her aunt came to Calcutta and the defence triumphantly referred to her letter to her husband to that effect dated 14 11 1930 (Ex O/F) For her real feelings on the subject we must again turn to her private diary which shews something very different to what she wrote to her husband—entry of 14 11 1930 Ex 11 ?)— There was a proposal for going for a change of climate as I was getting fever Father suggested Kishoregunj Other family members are not willing to go there any more than I am when father asked me I said no' Her feeling towards her husband at this time are very clearly reflected in her private diary On 9 11 30 she wrote therein her husband came to Calcutta on November 1 and left for Feni on November 4 when he first came she felt very well he sent for her and enquired of her illness she replied to all his queries without so much as looking at his face On 11 11 30 she wrote down further reaction on the marriage ties marriage without love is but a legal ties and a pollution of one's body There is an entry of the previous month (11 10 1930) which will also throw some light on her movements and her attitude generally The notes is entitled Recollections of Benares and reads thus — At the time of my starting father was not at home So I could not speak to him There was another reason for not informing him he would never have consented if I had sought his permission I boarded a bus hesitatingly I thought father would scold me when he returns home But soon that sense of timidity wore off A line of my song flashed through my mind—In the wilderness of this world whom need I fear? A great joy came into my mind whom need I fear? What can any man do? At most they can lure abuse at me There is evidence to when she went to Benares with whom and why It is clear that it a clandestine visit unknown to her father or her husband She has

in evidence that she went to Benares with her mother Her own diary proves it to be false

Delhi Incident

It appears, therefore, that her bodily well being, no less than her spiritual uplift and the clearing of her fog of depression, rendered it absolutely essential that she should go to Delhi with her Bara kaka Was it with her husband s knowledge and consent ? He says that his permission was never sought On 23 1 1931 his wife wrote to him (Ex H) as follows — Bara Kaka is going to Delhi He has asked me to go with him as it would be a good change for me I may go with Bara kaka We will probably be leaving to morrow i e, Monday, by the Delhi Express in the after noon By no stretch of imagination can this be regarded as a dutiful and obedient wife obtaining her husband s permission It announces the probablity of her going It announces an accomplished fact in the sense that it was impossible for her husband to stop it even if he had a mind to do so, she says she is likely to start the next day Her diary however shows she did not actually start till January 26 but how was her husband to know that when he got her letter on January 26 saying she was off that very day From the complainant it was elicited in cross examination that he sent a telegram giving his consent to her going to Delhi but he says he was given to understand by his father in law in a letter that Bina s younger sister and the accused s niece and Bina s mother would all be going with her and the accused to Delhi The defence contends that he should not be believed because he has not produced that letter of his father in law which he says he has destroyed It might equally be contended that as the defence has not produced the telegram they have something to conceal and the telegram if produced might disclose something relevant as to complainant s idea of who were going to Delhi and on what cond tions he gave his consent

We must turn once more to her diary to see whether she was going to Delhi as an invalid who was desperately ill or whether she regarded it as a very jolly outing On 29 1 1931 she wrote in her diary as follows —

We started for Delhi by the Punjab Mail on the 26th night I had a comfortable journey in a 2nd class compartment Kaka occupied 1st class I spent the night lying down I went to Kaka s compartment in the morning and had tea with him I had chop cutlet sandesh loochi etc At mid day I had curry and rice and dal, vegetables etc At 5 30 p m I had tea fried chira singara etc Kaka proposed we should have dinner in the restaurant car At 7 30 p m Kaka called and said 'Let us go to dinner I felt very happy before I started for Delhi I am here alone but none the worse for it The diet described above even if we leave the numerous et cetera to the imagination, is hardly that of a moribund invalid whose life was despaired of

The situation is really extra ordinary A young woman aged 20 or 21 goes off alone with an elderly man aged 51 or 52, whom she no doubt calls Bara kaka but who is not so very closely related to her The only intimation she vouchsafes her husband is that very likely she is *going* and that on the very next day That is hardly seeking his permission or even ascertaining his wishes in the matter, much less is it giving him time to say anything one way or the other Assuming that her father did write and tell Promotha that other women folk of his family would go with her, it is offset by her own note in her diary that she wanted her father to write to her husband and that she anticipated objection on his part There is the further point to be considered that if complainant was given the assurance that Bina would not go alone why was it that she did not go alone ? Her answer is short and concise—no one was available One wonders whether all her sisters apparently she has at least two, if not three—were all busy studying for their I A and B A like their elder sister If her mother could go with her to Benares why could she not go with her desperately sick daughter to Delhi ? Under these circumstances it must not be regarded as unduly uncharitabe if people are so low minded as to regard the conduct of the accused and Bina as not wholly above suspicion

It is in evidence that the husband and wife corresponded with each other while she was at Delhi and on two occasions on 25/2/31 (Ex 16) and 11/4/31 even the accused wrote from Delhi to the complainant In the first of these two letters the accused even invited the complainant to take casual leave and pay them a visit which offer however he did not avail himself of The complainant swears that as soon as he got his wife's letter and realised she was there alone with the accused he remonstrated When shown his letters carefully treasured by his wife (they *do not contain any word of remonstrance or protest*) he said he thought it useless for him to protest as he was faced with an accomplished fact On the one hand I feel that safely tucked away as he was at Feni and dealing with a wife such as this lady appears to be from her own diary, he must have found himself in an extraordinary difficult position She went off without his permission Can it be with any degree of certainty that she would meekly have returned to Calcutta if he had ordered her to do so ? On the other hand this extraordinary man s subsequent conduct is most difficult to understand On Bina s return to Calcutta on the 15th or 16th April 1931 he went and stayed at her parent s house for a few days and then took her to Krishnagar where she stayed with him for six weeks He then brought her back to her parents' house and left her in Calcutta to resume her studies Admittedly he never uttered a word of warning to anyone If he di[illegible] suspect his wife s fidelity it would not have been without reason or j[illegible] fication One cannot help wondering what Dr Sisir Mitter whose

as he says stands in the same degree of relationship to the accused as does Bina and gives the accused a very good character as an affectionate uncle would have done in similar circumstances if his wife Mrs Lily Mitter had thought fit to go off alone with the accused to Delhi and spend three months there with him There are certain other facts which also go to render the complainant's conduct very curious In a letter written to his wife from Feni on 17/7/31, he informs her he has applied for a post which fell vacant in the Delhi College to which his wife replies on 28/7/31 that Bara Kaka has asked Kumud Sankar (? Roy) to write to the Principal of the Hindu College On 27/11/31 he writes to his wife (Ex P) that after living together so long he is finding single life very distasteful All I can say is that I simply do not know what to think

Before leaving this Delhi incident reference must be made to the evidence of the witnesses Mr Shamsuddin Ahmad and Badi uz Zaman The former only proves Bina's presence in accused s house a fact which is not in dispute Badi uz Zaman however, seems to prove adultery He is a motor driver aged 35 who was in the service of the late Raja of Azimgunj who was a member of the Council of State He accompanied his master to Delhi in the first week of February 1931 when the Council of State was in session The house occupied by the accused is in the same compound as the Raja s separated by an extensive lawn Badi uz Zaman says he used to see Bina and the accused billing and cooing in their house—in his own quaint language he used to see her feeding him with bread and biscuits On one occasion he saw them in bed in each other s arms His evidence however is worthless for two reasons (1) its inherent absurdity, (2) the manner in which it was secured He admits that the two houses were seperated by a vast expanse of ground and the interior of the accused s house was not visible from the Rajah s house How then could he see so much ? The easy reply was—Oh ! from the garage, am I not a motor driver ? But then he had to admit that the garage does not face the accused s house Not in the least perturbed the smiling reply came that the garage has a back window through which he saw everything But what about purdahs and curtains in the accused s house ? Why there weren t any Apart from the absurdities of this story let us consider how he came to depose in this case There is no mention of his name in the petition of complaint The complainant admits that even after he had filed his complaint he had no idea of this man s existence Then a wonderful thing happened His lawyer on reading through his wife s letters to him enquired of him if he knew any employee of the Raja of Azimgunj (This cannot be true for the Raja s name does not occur in any of the letters The complainant did not know any servant of the Raja but he mentioned his lawyer's simple query to his brother in law Bibhuti who in turn passed it on to his cousin Dakhina Ranjan Biswas this man is not a witness, he is said to live at Azimganj It was he who traced

out Badi-u-Zaman On the evidence of this gentleman I would not hold a cockroach guilty of misconduct

Bina s Reunion With Husband

In July 1932 Bina passed her B A examination and in September began her post graduate studies as a private student Her husband says it was against his wishes that she did so, he wanted her to accompany him to Feni after the summer vacation but she refused Bina admits the refusal but gives the reason for it On 17th June 1932 her husband wrote her a most insulting letter (Ex S) blackguarding her and her whole family particularly her mother This letter shows the complainant in a really angry and bitter mood, he says he is sorry he ever married the sickly daughter of poor man whose mother is a shrew He accuses the whole family of clinging to and fawning upon men with money and in particular to Bara kaka But here is something which again leaves one guessing—not a word in this furious letter of 10 pages so much as writing at undue familiarity between his wif and her Bara kaka It was not till 5th September 1932 that he wrote and apologised to her and enquired when she was coming back to him and telling that he missed her sorely Her reply dated 11th September 1932 was that she was quite willing to return to him but not till her college closed she would then spend the vacation with him It was on 9th October 1932 that Bimal the son of her husband s brother in law reached her to Feni The date is of very special importance The complainant s case is that she left Calcutta suddenly because she found she was pregnant not by her husband but by the accused and hence her intelligent anticipation of future events prompting her desire to join her husband as speedily as possible It is not in evidence when her college closed for the pujah vacation of 1932 She says she was a private student I am not aware whether that fact need have prevented her from going to her husband earlier than the four weeks that elapsed between his letter of apology and request to go to him and her actual departure Be that as it may she went on October 9 1932 Her husband says that at once he noticed signs of pregnancy the presence of nausea and the cessation of menses yet he did not question her regarding her condition till December This cannot possibly be true for several reason (1) immediately on her arrival he could not possibly have known whether her menses had stopped or not (2) as the child was born on 13th August 1933 she could not have been pregnant as far back as 9th October 1932 That would make an abnormal period of gestation of about 310 days Taking the period of gestation to be 280 days it looks as if she must have conceived a the middle of November, 1932 when she was with the husband at F Apart from that, his own letters to her after she left Feni in April (and carefully treasured by her) show throughout he regarded the

as his own The following are the letters —(1) dated 5th April 1933 (Ex B B), written the day after she left Feni—he says he misses her terribly and has lost his appetite so his servant Bhagaban gets all the luchis and patal bhajas He then enquires, what about your child? write to me about your health (2) Letter dated 11th April 1933 (Ex CC) begging her to be very careful about her diet and her movements He also wants to know by what train she is coming to Feni from Chittagong (She had obviously gone from Feni to Chittagong and would pass through Feni on her way to Calcutta) The letter shows she broke journey for 2 days at Feni and then came to Calcutta

(3) The next letter, dated 14th April 1933 (Ex DD) reads as follows, Since you left yesterday my mind and heart are blank and void I cannot enjoy anything I feel I cannot live even for a day without you On the night you left you lay beside me for one hour I can still feel the touch of your body Binu my own now that you have become truly my own our hearts are one etc

(4) On 22nd April 1933 (Ex FE) he wrote to her Pray to God morning and night that you may be blessed with a happy handsome boy

(5) On 27th April 1933 (Ex FF) he wrote With the approach of night I feel that if you were here I would have hugged you in sleep. For want of you I have to hug my pillow '

These letters definitely show that the reconciliation after the quarrel in the summer of 1932 was complete and that they lived as man and wife and that she must therefore have conceived by her husband In his evidence the complainant began by saying that his wife's confinement was paid for by the accused when confronted with two of his letters to his wife (Exs V and W—written in July and August) he had to admit that he sent Rs 70 to his wife and that this was paid to the hospital which charged 7/ per day for her lying in of 10 days On the birth of the child a telegram was sent to the complainant who on 14 8 33 the very day after the child was born wrote to his father in law saying how glad he was to hear that mother and son were doing well On 17 8 33 he wrote to his father in law (Ex X) that he was very glad to hear that a boy has been born to us There followed numerous letters to his wife begging him to be careful about herself and the boy about the precautions she should take against his catching cold even directions about feeding him a Glaxo and enquiring how his hair is growing Admittedly it was he who chose the boy's name Arun Kumar In short tremendous enthusiasm on the part of the proud father His evidence in Court that that enthusiasm was all feigned and inspired solely by pity of the little fatherless child is not borne out by his letters or his conduct and I am very definitely of opinion that the child is his How else can be explained his letter to his father in law dated 5 9 33 (Ex Z) asking him to invoke

the accused's assistance in securing him the post of Professor of Economics in the Burdwan College

The Closing Incident

We have now reached the closing incident in the married life of this unhappy pair, the quarrel at 1 Dr Rajendra Road in June, 1934 There is only the oral evidence of the husband that it occurred on June 14th and of the wife that it was not till June 23rd There is some slight corroboration of the wife's version in the evidence of Dr Sisir Mitter though I am not satisfied that he is a wholly disinterested witness There is nothing in writing either in the shape of a letter or an entry in any diary, to fix the date of the quarrel The complainants, however has closely questioned by the Court when he was examined in chief as to his movement just before and after the quarrel He says he came to Calcutta for the summer holidays on June 10th or 11th and stayed for 2 or 3 days at 1, Dr Rajendra Road when there was the final rupture After that, he went off to stay with his broher-in-law Bibhuti at 25/2 Guru prosad Chatterjee Lane for 5 or 6 days he left for Feni on June 30th or July 1st That looks as if the quarrel occurred some days later than the 14th June In cross examination however he made an attempt to increase the interval between his leaving his wife's parents house and his return to Feni on June 30th by saying that from Bibhuti's house he did not go direct to Feni but via Krishnagar where he stayed for 4 or 5 days to pick up his luggage

How They Quarrelled About

The next point for consideration is what they quarrelled about The husband says he was only reading his wife's diary and her letters I am not sure what he meant by 'her' letters—whether he meant his own letters to her which were in her box or letters written by other people to her with a suggestion that they were the accused's letters to her—I doubt if the latter was intended Bina and the accused were all along living in Calcutta and there could not have been much occasion for them to correspond It may reasonably be assumed that the complainant was looking through his own letters to her which she had carefully put away in a box That is what Bina actually says she had done She however says her husband had taken them out of her box and put them away in his own Hence the quarrel The occasion of the quarrel is clear but what was the real cause? A wife does not normally order her husband out of the house merely because she has found him reading her personal diary and his letters to her That hardly furnishes sufficient provocation to the wife to fly into such a rage and take such an extreme step One cannot help wondering whether the real cause was that the husband had been threatening his wife with legal action, hence his anxiety to get back his letters to her and her anxiety ..

to part with them as if her character could be indicated only with the help of those letters

Incident of June 17

There remains the final allegation of adultery on June 17th 1934 in the bed room of accused s flat One hardly expect evidence of eye witnesses in an adultery case but it has been offered in this case--not, I fear with any measure of success Complainant and his brother in law Benode Biswas are the eye witnesses Let us see how they came to set out together at 2 P M on June 17th for the Hindusthan Buildings Bibhuti and Benode married the complainant s sisters The complainant having been turned out of his wife s house was staying with Bibhuti to whom he had spoken of the final break with his wife at this juncture according to the complainant and Bibhuti Benode comes to Calcutta from Nadia on June 17th at 10 A M unannounced and unexpected neither Bibhuti nor the complainant had asked him to come—what brought Benode to Calcutta on the fateful day? He says he had heard that complainant was in Calcutta he had long wanted to secure the Nadia Agency of Accused s firm he had never met the accused and had not written to him Hence his arrival in Calcutta at the psychological moment Realising the weakness of the alleged coincidence in cross examination he attempted to prevaricate he really came to Calcutta on the 16th went to Kalighat and returned to Calcutta on 17th—as if Kalighat is out of Calcutta Be that as it may Promotha Sarkar was approached by Benode to take him to the accused s residence Promotha says he agreed to do so he says he went with a double purpose—to introduce Benode to accused and to trap his wife if possible but without disclosing the latter motive to Benode This in itself sounds improbable They all went at Bibhuti s house Promotha had told Bibhuti all about his quarrel with his wife It is more than likely that he would also tell Benode Yet Benode supports complainant in maintaining that he was not told they were going to accused s house to try and catch him in a compromising situation with Bina Incidentally in the petition of complainant Benode is described as an acquaintance as if it was felt that it would be too much of a good thing to say that the only eye witness to corroborate complainant was his brother in law

Having arrived at the Hindusthan Buildings complainant says he enquired of the darwan at the entrance whether accused was at home and was told he was not He and Benode therefore waited outside for half an hour Complainant saw Bina arrive in accused s green Saloon Car Benode says he did not see her he was looking in the opposite direction says the complainant smoking a cigarette This is only to keep up the story that Benode was kept in the dark as to the real purpose of complainant s visit. Even after Bina s arrival complainant and Benode waited half an hour outside It is necessary of course to give the guilty couple

time to undress and get into bed before they can be discovered After that reasonable intent, complainant and Benode marched upstairs, met a solitary servant in the corridor, ignoring his request to them to sit in a waiting room burst straight into the accused's bedroom, to find them in bed The story is not convincing The accused says he has many servants living on the premises and it would not be possible for any one to walk straight into his bed room It is true the complainant is familiar with the accused's flat, as he admits he has been there on several occasions at accused's invitation, he might therefore very well know which is the bed room But the accused would surely hear two people coming up the stairs and walking along a long marble corridor before they got to the bed room The complainant realising the inherent improbability of his story when questioned as to what shoes he wore said he had on rubber shoes, Benode of course, not being in the know wore ordinary shoes—he could hardly with any degree of consistency be made to wear rubber shoes The story that accused's bedroom was unlocked also carries no conviction Finally there is yet another consideration of probability which militates against the story set up If Bina had turned out her husband three days previously it is extremely doubtful if not knowing where her husband and what he was up to she should have the hardihood to visit the accused's flat on July 17

Delay In Instituting Case

Finally there is the matter of 8 month's delay in instituting this case Unless some reasonable explanation of the delay is forthcoming it inevitably draws suspicion on the tardily made allegations It is in evidence that there was the husband's notice in the Statesman in October 1931 This certainly proves there was a break but that fact is not in dispute At the time of that notice complainant sent a registered letter to his wife which she refused Complainant has not produced it The defence contends that its non production proves that it contained no allegation of misconduct It was on February 22 1933 that complainant came to Calcutta not to file this complaint but to attend an examiner's meeting I cannot understand what he was waiting for as he stated in evidence that as far back as October 1931 he wanted to get rid of his wife It was Bibhuti who urged him to do something in the matter he showed a copy of the 'Kheali' of February 7 1933 and told him that his wife's name was being bandied about in connection with the accused The complainant says he then went to his Solicitor with a view to instituting divorce proceedings, it was only on their advice that he started the present criminal case All I feel called upon to say that he was very badly advised A divorce case would have been the proper course to take The complainant's explanation of the delay are three-fold —

(i) his place of work (I can is 300 miles from Calcutta)

(ii) the accused is a powerful and influential man against whom he did not venture to proceed

(iii) he had no opportunity to act earlier

None of those reasons is adequate or convincing He came to calcutta in October 1934, he consulted lawyers and the result was a notice in the 'Statesman' There was nothing to prevent his taking legal proceedings then His fear of the accused as a rich and influential man cannot be regarded seriously The inordinate delay in instituting this case therefore necessarily tells against the credibility of the story

In conclusion I have said all I have to say about the Delhi incident About the paternity of the child I have not the slightest doubt that the complainant is the father About the incident of June 17, 1934 I am unable to accept the evidence

On the evidence therefore I find the charges are not sustainable The accused is accordingly acquitted

THE MOST MOMENTOUS CRIMINAL TRIAL

The Lahore Conspiracy Case

HARDIAL S EXPLOITS IN AMERICA AND INDIA

Judge on Pingley s Claim to Clemency

(By Lt Col A A Irvine C I E)

The trial of the Dartmoor convicts was a big trial, both as regards its importance and the number of the accused persons and witnesses who took part in it Amongst other big trials held during comparatively recent years may be cited that of the thirty seven Camorrists which began at Viterbo in March 1911 It lasted for more than a year, and involved three hundred sittings of the Court

The trial with which I am now concerned was known at the time as "The Lahore Conspiracy Case' and the then Lieutenant Governor of the Punjab on the occasion referred to it as the most momentous criminal trial of this generation In view of its importance to India during a period of especial stress His Honour s pronouncement cannot be considered to have been an over statement of the case.

24 Death Sentences

This trial in respect of which it fell to my lot to be President of the three Special Commissioners who formed the tribunal took place under the Defence of India Act of 1915—an Act framed ' to secure public safety and the defence of British India and for the more speedy trial of certain offences" It commenced on the morning of April the 26th, 1915, and our lengthy judgment was signed by us nearly four and a half months later before writing the judgment we had to record tabulate and pass under the most careful review the statements of nearly seven hundred persons, and had likewise to examine a stupendous mass of printed and typewritten

documents together with exhibits of every description ranging from revolutionary flags to bombs fashioned out of ordinary brass ink pots

The printed complaint filed by the Government Advocate disclosed the names of eighty two accused some of whom were absconding and sixty four of whom actually appeared before us in the dock Almost all of these were Sikhs, there were a few Hindu, Mohamedans were conspicuous by their absence At the conclusion of the trial we found it incumbent on us to pass twenty four death sentences, many others of the accused being sentenced to transportation for life or to lesser terms of imprisonment The remainder were either discharged during the course of the trial or were finally acquitted

My two colleagues on the bench of Commissioners were members of the Indian Civil Service (who like myself *had been for several years a Sessions* Judge in the Punjab Commission) and a distinguished Indian member of the Lahore Bar Our powers under the Special Act made our work particularly responsible since according to its mandatory provisions our judgment was to be considered final and conclusive while there was to be no appeal' from any order or sentence passed by us The exercise of clemency was of course reserved to His Excellency the Viceroy and to His Honour the Lieutenant Governor of the Punjab

In the case of one convict His Honour commuted the death sentence to one of transportation Subsequently in respect of no less than sixteen persons the death sentences were commuted by the Government of India, and on the controversy over the action of the Government I prefer not to comment

Before coming to more intimate details of the trial which I think may prove to be of interest it seems desirable to recount a brief history of events which led to the passing of the Defence Act

Har Dayal

As far back as the year 1907 a fiery wave of sedition had blazed its way across India In Calcutta and other places it had continued to smoulder and by 1912 it had travelled to the Pacific Coast of America where the conspiracy with which it was our duty to deal had its origin The head quarters of the Indian revolutionary party at first in Vancouver were latterly centred in San Francisco

At about the end of 1912 there arrived in that region one Hardial a noted Hindu seditionist who commenced delivering a series of lectures on Atheism This individual although he had been awarded by the Punjab Government and had enjoyed almost to its conclusion a scholarship at Oxford had for some reason become imbued with a malignant hatred of all things British Abandoning therefore the cult of Atheism for that of revolutionary politics Hardial proceeded during 1913 to tour the country spreading the flame of sedition,

raising funds and securing followers, with the avowed object of waging war against His Majesty the King Emperor, and of massacring or driving out of India every man, woman and child of European extraction It may be said at once that like so many of his fellow agitators,* Hardial was extremely careful of his own skin Long before the storm had broken in India he had left his dupes to look after themselves and had incontinently vanished

There were in those days, scattered over California and Oregon, large numbers of Sikh emigrants men of magnificent physique, well fed, earning high wages, hardened by toil on the fruit farms and in the timber yards Among these unfortunate, credulous persons the astute Hardial found, as he expected, abundant material on which to exercise his machinations Forthwith, accompanied by other agitators as virulent as himself he multiplied his lecturing tours, and in addition to them, initiated a curriculum of seditions propaganda

Ghadr Movement

His chief instrument of propaganda was the 'Ghadr' (Mutiny) newspaper the first issue of which bore the date of November 1st, 1913 Its policy advocating wholesale extermination of the white monkeys' left nothing whatever to the imagination An ordinary issue was one of ten thousand copies and besides being broadcast over the Pacific Coast, it was smuggled into India by means of the usual postal channels In December of the same year, it began to appear with a yellow covert, symbolical of the 'dress of martyrs and heroes' One may here note that saffron is the Hindu religious colour and that in olden times Rajput warriors 'vowed to the death' were accustomed to smear their faces with the yellow turmeric before engaging in battle

A copy of the 'Ghadr issue dated January the 16th, 1914, is particularly worthy of remark It contains an account of a meeting at Sacramento, which was addressed by Hardial Lantern slides of famous seditionists, and murderers, along with revolutionary mottoes, were displayed, and Hardial deliberately proclaimed that Germany was preparing to go to war with England, and that the time had arrived to return to India for the coming rebellion Reference was made to the Mutiny of 1857 At a San Francisco meeting on march 25th, 1914, Hardial announced his intention of proceeding to Germany to prepare for the revolution that was fast approaching

Now, the above dates and the tenor of his pronouncements are full of significance when we remember that in May, 1914, the Austrian Emperor told his Ambassador in Constantinople that 'a European war was inevitable' that the Serajevo assassinations occurred on June the 28th of that year and that England entered the Great War on the 4th of August The question naturally arises, from what source did Hardial

derive his foreknowledge of events which he proclaimed in the preceding January ?

However this may have been as the result of his inspiration a multitude of Sikh emigrants, during and after July, 1914 began returning to India by Japanese vessels, stirring up trouble and enlisting assistance in the shape of men and money at the various ports en route Their plan of campaign included the massacre of Europeans and Indian loyalists, the seduction of troops students and villagers union with foreign enemies, bomb making and the looting of treasuries

The Punjab has almost always been fortunate in its rulers, and in that time of peril had for its Lieutenant Governor a man of outstanding strength and personality Many of the malcontents were interned soon after their arrival whilst others who had league was to follow them I, presumably because I chanced to be the President of the tribunal was to be reserved to the last by way of a bonne bouche! In addition to this we received from the Police a warning that all parcels bearing type written addresses might with advantages be soaked in water before being opened One such parcel reached me and, obeying instructions I immersed it for some time in one of those zinc tubs which, probably from the days of Warren Hastings have continued to do duty as baths all over India Its contents however proved to be nothing more deadly than a sodden bundle of wordily explosive literature forwarded to me by a lunatic litigant who imagined that he had a grievance against one of my subordinate magistrates !

The well intentioned precautions of the police for our personal safety were sometimes rather embarrassing On returning one evening to my hotel I found seated in front of my room a stalwart gentleman armed with a mighty lathi I was informed that he had been detained to act as my guard At my request he disappeared, but I believe afterwards prosecuted his watch and wordless obstrusively somewhere on the hotel premises in the guise of a bazar sweetmeat seller A lathi it may be explained, is a seven foot staff of male bamboo furnished at one end with brass or iron knobs It is much in favour with the Sikh peasantry for reducing to an unrecognizable pulp an enemy's anatomy The Member of Parliament who once described a riotous assembly of lathiwalas as a 'crowd armed with walking sticks' was even more than usually wide of the mark

Interesting Exhibits

The monotony of the daily routine was often relieved for judges and accused alike by the production of especially interesting exhibits. For instance, a big trunk seized by the Customs authorities would be opened in court to disgorge a quantity of harmless fancy ware pen trays blotting-books and the like But out of a false bottom would appear a store of

pistols hacksaws and copies of the 'Ghadr' newspaper Then there were the ink pot bombs and bombs made out of heavy brass water vessels fitted with screw tops intended for the blowing up of bridges There were the revolutionary flags in appearance somewhat resembling the national flag of Belgium These were three triped, blue for the Mahomedan (why green was not chosen I cannot say), red for the Hindu (Who was to bathe in the blood of the oppressor), and yellow for the Sikh (symbolical of his approaching reversion to Hinduism) To my mind the most noteworthy of the manifold exhibits were the illustrated copies of the Bomb and Poison Manuals the contents of which may not of course be divulged They emanated from Paris to which city an emissary of the conspirators had been sent with a view to his setting up a bomb factory in Calcutta after receiving instruction at the hands of Madame Kama and Krishna Varma a Bengali the well known Indian anarchist of the Paris centre

A morning spent over such exhibits would always send the accused jabbering interestedly to their midday meal and would afford the tribunal material for discussion during the luncheon hour in our little retiring room In that very sultry refrectory we two effete Europeans would observe with wonder and admiration the meal of our Indian 'confrere A strict vegetarian he was went to consume in addition to a plateful of dates a number of oranges a big bunch of bananas and an entire melon washed down by several cups of very hot and very sweet tea His fare most assuredly agreed with him, for a more genial and pain staking companion to work with could not anywhere have been discovered

Perfect Gem of Officialdom

It was during one of these hours of a relaxation that I received a communication which I regard as a perfect gem of officialdom It took the form of a letter from the then Registrar of the Chief Court, who was responsible for supplying the tribunal with stationery He wrote concerning his anxiety about theconsumption of foolscap pencils and 'Relief nibs that was taking and would I look into the matter and report, I am afraid that my reply was briefly to the effect that I had somewhat more important work to do during some twelve hours each day (in and out of court) than to keep an eye on 'Relief' nibs *et id genus omne*!' Relenting however, at his evident distress I went so far as to add a postcript informing him that those of the accused who could write were allowed pencils and paper for note making Further, that I personally broke the back of one 'Relief' nib daily, that my I C S colleague wrecked daily no less than three, whilst our Indian coadjutor contrived to make one nib last him for a week—as one might readily deduce from a sample of his hand writing

During our four and a half months as jail birds we were extremely fortunate in the matter of health, suffering from one the minor maladies

inseparable from very hard brain work in very hot weather In my own case the malady took the form of insomnia Instead of getting to sleep at night I would find myself exasperatingly wakeful revolving in my mind such questions as whether Witness X were sufficiently corroborated by Witness Y in his story about the pistol used in the Z dacoity—and so on As a panacea for insomnia the ordinary modern novel (strange to say!) proved absolutely useless and then of a sudden I chanced upon a sovereign remedy

In the catalogue of a Bombay bookseller I came across a list of the works of that great prince of story tellers the late Jules Verne of blessed memory I had not read one of them since my schooldays but the witchery of them once more fastened upon me rousing the desire for an absorbing yearn unburdened with sex appeal and the cocktail vagaries of so called Bright Young Things In due course there arrived a dozen paper-covered volumes and there after for an hour or two each night I journeyed round the Moon sped on a raft to the molten centre of the globe explored the depths of the sea with Captain Nemo Like a bad dream the Lahore Conspiracy Case fled from my consciousness until the following morning

Judgment At Simla

When, at length the statements of witnesses and accused along with the arguments of counsel had come to an end by permission of the Government we repaired to the cool heights of Simla to consider and write our judgment In a room littered with formidable piles of documents and law books we set to work our toil for the first few days being impeded at intervals by the efforts of a visitor in a neighbouring block of the hotel to acquire with indifferent success the melody of "Where my Caravan has Rested." Luckily for us his leave was on the point of expiring his caravan moved down to the Plains and we had peace

Our judgment written we proceeded to Lahore to deliver our sentences in the Jail which for the occasion was guarded by troops There had been reason, it appeared to anticipate a possible massed attack upon the buildings by bands of malcontents who had not yet been laid by the heels however nothing of the kind occurred

One Regret

We had been able, I am glad to say to embody in our judgment our warm appreciation of the work of that much maligned body the Indian Police Always in danger exposed to every sort of threat and inducement on the part of the conspirators who after all were their own countrymen the personnel of the Police Force remained magnificently loyal to their duty Indeed throughout the vast conglomeration of evidence produced before us, we learned of only one instance in which a member of the

police had wavered in his allegiance, that of a constable who had gone so far as to agree to sit on the fence and see which way the wind might blow!

The finale of this big trial left me with one regret It was this—that when so many commutations of sentences were considered necessary by the Government the exercise of clemency was not extended to Veshno Ganesh Pingley Mahratta Brahman of the Poona district Of his guilt there could be no question, but I think that before the end came he had realised that he had been made a dupe by others that Englishmen were not the tyrants that he had been led to believe He was splendidly staunch to his fellow conspirators, his behaviour in court earned our respect In short revolutionary bomb maker seducer of troops though he had been he was essentially a gentleman —'Indian Empire Review'

PATRIKA CONTEMPT CASE

Following is the detailed judgment of Mr Justice Costello in connection with the Patrika contempt of court case —

I entirely agree with the views expressed by My Lord the Chief Justice

Sir Tej Bahadur Sapru in his argument on behalf of the Respondent Tushar Kanti Ghosh made the submission that the article which appeared in the "Amrita Bazar Patrika on the 23rd March last did not refer to any case pending before this Court or to any case decided by this court either recently or in the past and that assuming in any view of the matter that the article in question amounts to contempt of Court it is at the most a technical contempt and as it does not seek to obstruct the cause of justice or interfere with any trial this Court has no jurisdiction whatever to take proceedings by way of summary procedure and that the proper procedure should be by information under section 191 of Cr Pro Code

The first question we have to determine in this matter is whether the article referred to in the affidavit of Mr Collet does amount to contempt of Court and at the outset I think it should be emphasised that we act in these matters not to defend the dignity of the Court but to safeguard the proper administration of justice and to ensure as far as possible that the confidence of the Public in that administration was not to be destroyed or in any way diminished In that connection one should bear in mind the weighty words of Wills—J who delivered judgment of the court in the case of *Rex v Davis* (1906 I K B 32 when he said that the principle which is the root of and underlies the cases in which person have been punished for attacks upon court will be found to be not the purpose of protecting either the court as a whole or individual judges of the court from a repetition of them but of protecting the public and specially those who either voluntarily or by compulsion are subject to its jurisdiction from the mischief they will incur if the authority of the Tribunal be undermined or impaired Wills J cite a part of the undelivered judgment of Wilmot

C J in *Rex v Almon* (1765) where he said that attacks upon the judges excite in the minds of the people a general dissatisfaction with all judicial determinations and whenever men s allegiance to the laws is so fundamentally shaken it is the most dangerous obstruction of justice and in my opinion calls out for a more rapid and immediate redress than any other obstruction whatsoever not for the sake of the judges as private individuals but because they are the channels by which the Kings justice is conveyed to the people To be impartial and to be universally thought so are both absolutely necessary for giving justice that free open and unimpaired current which it has for many ages found all over this Kingdom These words of Wilmot C J have been quoted with approval in innumerable cases throughout the 170 years which have elapsed since they were written and despite the doubt as to their applicability to the present instance which Sir Tej Bahadur Sapru sought to establish they must be taken to constitute the appropriate criterion and the right cannon of interpretation for use in a matter of the kind now before us Applying the principle enunciated above I can only come to the conclusion that the article is not only a contempt but a contempt of a very serious nature in that the first paragraph of the article is directly calculated to instil in the minds of the people a mistrust of and dissatisfaction with the administration of justice in this presidency It seems clear that the object and intention of the attack was to induce the public at large to believe that future cases in the court will be dealt with by Judges who are no longer free from outside control or influence specially in proceedings to which the executive in some form or other is a party or in which the executive is interested A more scandalous and mischievous assertion against any court as such it is difficult to imagine To call the sort of statement published or permitted to be published by the Respondents in this case a fair comment or a mere technical contempt is to my mind an entire misuse of words and is a contention which must be rejected It is to be observed that the question whether a particular publication be libellous or contemptuous and the construction of that publication is as has been said in many instance a question of the Court which deals with the matter —see per Paterson J *in re Crawford* This brings me to the question of the jurisdiction of the Court to punish a contempt of this nature in summary proceedings such as is present before the Court itself because in the case I have just referred to —Crawford s case it had been objected that the court could have no general power of commitment for libel published out of Court Paterson J in the cause of that case said that in *Rex v Almon* there was a very learned judgment by Chief Justice Wilmot in which he satisfactorily showed that a Court of Record has power to punish by commitment for contempt or libel published while the Court is

sitting Paterson J. then stated 'there must be a choice as to the mode of proceedings for he (i e, Wilmot C J) says that the punishment may be by indictment or commitment for contempt He treats it throughout as a matter for election" Paterson J then held that the court had the power, i e to commit and stated "that is clear law' It has been strenuously argued in the proceedings now before us that as there is no question of a contempt in Facie Curiae or in connection with a pending or recently determined cause This court although admittedly a court of record has no power to deal summarily with the offender There are however many authorities for the proposition that it is well within the competency of a High Court in India to deal summarily with a contempt consisting of scandalous or scurrilous comments made in connection with a matter already adjudicated upon and in this connection having regard to what has been already said by My Lord the Chief Justice, I need only mention the case of *In re Satyabodha Ramchandra Ada Baddi*, 47 Bombay 76 where Martin J referred with approval to the judgment of Wills J (from which I have already quoted) and to the undelivered judgment of Wilmot C J He also referred to several previous cases in the Bombay High Court in which similar points had arisen I am wholly at a loss to understand how it can be contended that it would be right to proceed by way of summary procedure in a case where a scandalous attack had been made upon a court by reason of something which had happened in the past but wrong to proceed in like manner where scandalous attack is made upon the court which from its very nature must have a disturbing and indeed pernicious effect upon the mind of the public in general concerning the purity and impartiality of the adjudication of every succeeding case coming before the court or at any rate in connection with the ever constant succession of cases in which in some shape or form the executive is a party interested In my opinion to endeavour to proceed by way of information in case of contempt by scandalising the whole court would be to attempt something which upon a reasonable visualisation of its meritable concomitants and implications would appear to be not only patently inconvenient and unseemly but also practically impossible Sir Tej Bahadur Sapru based the whole fabric of his argument about the question [illegible] jurisdiction upon the dictum of Lord Morris in *McLeod vs St Aubyn* [illegible]h has already been commented upon by my Lord and on the strength [illegible] at one authority the learned advocate has invited us to hold that the [illegible] ent of Lord Wilmot C J has long since ceased to be a correct en[illegible] ation of the law It cannot be doubted and indeed it is beyond ques[illegible] that if the views expressed by Wilmot C J hold good and apply in this [illegible] untry then it is clearly competent for this High Court to proceed by way [illegible] summary procedure any case of contempt by scandalising the court an[illegible] so the whole of Sir Tej Bahadur Sapru's arguments falls to the

ground The learned advocate found himself bound to admit to the fullest extent that the judgment of Wilmot C J has indeed been quoted with approval and the doctrine applied in a long series of cases many of which are tabulated at p 30 Sir John Fox's monograph on "contempt of court" to which Sir Tej Bahadur Sapru referred as lending support to his argument It is to be noted however that Sir John Fox at p 33 of his book affirms that by a series of decisions and by citations Wilmot's doctrine has become part of the law of England though he queries the question whether there is any solid ground for the contention that it was the law by immemorial usage in the year 1765 Sir Tej Bahadur Sapru was quite unable to place before us even one case in which Wilmot's doctrine has been dissented from or even adversely commented upon by any court with the solitary exception of a dissenting judgment by an Irish Judge Fletcher J in a case which has never been properly reported As I indicated to Sir Tej Bahadur Sapru in the course of his argument it seems to me to be asking too much of his or any other court to invite it to reject Wilmot's doctrine on the strength of this one dissenting opinion which stands alone in the long catenation of decisions agreeing with the principles laid down in Alman's case That the doctrine enunciated by Wilmot and the procedure approved by him are still valid and subsisting in England is in my opinion quite clear from the judgment in *Rex vs Gray* (1900) 2 Q B 36, *Rex vs Davis* (Ubi Supra) and *Rex vs Editor of the New Statesman* (44 T L R 301) to which reference has been made by my Lord the Chief Justice It seems to me therefore with all possible respect to Lord Morris that his lordship's speech in *McLeod vs St Aubyn* cannot be taken as being a correct enunciation of the law if indeed it was really intended to be so It may well be the noble and learned lord was doing no more than stating as a matter of fact that the proceedings by way of summary procedure were obsolete—obsolete for the reason that with the spread of education in England and the growth of a wide spread healthy public opinion and in general respect for the administration of justice occasions for resorting to summary procedure in cases of contempt by scandalising the court had been few and far between if not wholly non existent It happened that the point now under discussion came before the High Court of the Irish Free State in the year 1928 in the case of the *Attorney-General vs Sean T O Kelly* (1928 T R) when a Bench consisted of Sullivan P, Meredith and Hanna J J held that the committals for contempt of court by scandalising the court itself have not become obsolete and that the dictum to the contrary in *McLeod vs St Aubyn* (1899) A C 549 cannot be accepted as accurate having regard to the subsequent decision in *Rex vs Gray* (Ubi Sufra) and *Rex vs Editor of the New Statesman* In O Kelly's case as a preliminary objection had been raised that the court had no jurisdiction to entertain the application made by the General that an order of attachment should issue against th

Nation newspaper Sullivan P in his judgment said that in order to appreciate the argument that was addressed to the court on this preliminary point and to rule upon it was necessary to consider in the first place the origin and nature of the power to commit and then he stated that the opinion of Wilmot in *Rex vs Alman* is regarded as authoritative on this question It is referred to by Palles C B in *Attorney General vs Kissane* 32 L R Ir 220 and I quote the judgment of the Chief Baron from the report of that case at page 271"—the judgment of the Chief Baron set forth in full the opinion of Wilmot C J —"and then Sullivan P quoted in extenso the judgment of Lord Blackburn in Shipworth s case L R 90 G 230 at 232 and proceeded thus —

The power so defined has been exercised when the occasion required by the Courts in England and Ireland, not only (1) where some contempt has been committed in the face of the Court or (2) where comments calculated to interfere with the course of justice have been made on cases pending in the Courts but (3) where scandalous matter of the Court itself has been published This proposition was not disputed as regards the first and second classes of contempt I have mentioned, but the opinion of the Privy Council in *McLeod vs St Aubyn* (1899) A C 519 was relied on as showing that committals for contempt of Court by scandalising the Court itself have become obsolete In view of the subsequent decisions in England in *R v Gray* (1900) 2 Q B 36, and *R V Editor of the New Statesman* (44 T L R.301) I cannot accept the dictum in McLeod s case as accurate In each of these cases the English courts recognised and exercised the jurisdiction to punish on summary process the Editor of a newspaper for contempt of court in publishing scandalous matter of a judge with reference to his conduct in judicial proceedings

Hanna in his judgment (at p 330) touching the question of whether the procedure by attachment was one within the competence of the court expressed the opinion that it was and that it was not obsolete or in any way confined and said that he could not accept the arguments that where the contempt was in *Facie Curiae* the cases were always dealt with either by the judge himself or by the court nor the view that contested cases of consequential or constructive contempt that is those other than those committed *exfacie curiae* were always dealt with before a jury by indictment The learned judge then said The position of this power of attachment is made clear by the judgment in Kessane s case (32 L R Ir 220) Each of the three procedures was open for contempt of court The cases show that for many years before the hearing of *McLeod v St Aubyn* (1899) A C 549 the practice of proceeding by attachment had not been used, so much so that Lord Morris stated in that case that it had become obsolete However this may be, it is clear that it has been frequently resorted to both in

England and Ireland in the succeeding years during which the Press attained such a widespread influence so that, though it might have been at one time dormant it had at the date of constitution become a living procedure, with all its ancient powers The latest case is but a few weeks ago, *R v the Editor of the New Statesman* (44 T L R) reported in the current Times Law Reports

Meredith J although differing from the other members of the court on the merits of the particular case agreed with the President and Hanna J on the question of the extent of the jurisdiction of the court

In my opinion it cannot be gainsaid that courts of record have an inherent power of punishing and in a summary way any act done or writing published calculated to bring the court or a judge of the court into contempt or to lower its authority i e a class of contempt characterised by Lord Hardwicke *in re Read and Huggonson* (1742) 2 A T K 471 as scandalising a court or a judge) that is part of the common law of England and was so at the time when that law was introduced in India in the 18th century and thenceforward administered by the courts in this country Thus it comes about that the High Courts in India have inherited a similar power It happens that there does not appear to be any precedent exactly on all fours the present proceedings with the exception of a case to which I shall refer in a moment but there as appears from the judgment delivered by my Lord the Chief Justice and as already indicated by me a number of decisions sufficiently close and analogous to the present case to warrant the assumption that the powers of this Court are wide enough to enable it to deal with the Respondents herein in a summary way and in my opinion this is essential where it was desirable for action to be taken shortly and summarily owing to the obstruction to the administration of justice created by the precise nature of the allegations contained in the article and its mischievous effect in the minds of the public and in particular of all litigants and accused persons Neither Sir Tej Bahadur Sapru nor Mr S N Banerji were able to place before us a single example of a contempt of court having been dealt with by way of information or by other method than *brevi manu* but on the other hand there is the case of *in re an Advocate of Allahabad* 35 All L J 125 (which furnished the exception mentioned above) where it was definitely held by the Allahabad High Court that the jurisdiction of the court to punish every contempt is not confined to cases where the aspersion which is alleged to amount to contempt is a reflection upon a particular Bench in connection with the conduct of a particular case but extends to cases where a general aspersion is made upon the character and capacity of the court or a judge independently of any case The cases of *in re Abdul Hassan Janbar* 45 711 and *Rex v Gray* (1900) 2 Q B D 36 were relied upon It hap that Sir Tej Bahadur Sapru appeared also in the Allahabad ca

Advocate for the respondent and he appears to have then put forward the same kind of argument as that which he has advanced in the present proceedings before us, an argument largely founded on the dictum of Lord Morris case with regard to which the Allahabad Bench said as follows —

'Once it is conceded that to scandalise the court is a contempt then any publication which scandalises the court and lowers its prestige is clearly a contempt even though there is no record that similar publications have been held by the courts in the past to constitute contempt As we have already observed, general aspersions upon the character and the capacity of the court must be comparatively rare and the absence of any reports of such cases in our view, affords support for the contention of learned counsel for the opposite parties Learned counsel further contended that the remedy where a court and not a particular judge has been defamed should not be by way of proceedings for contempt of court but by criminal proceedings at the instance of the Government advocate under the provision of section 191 of the Cr Procedure Code. We are unable to agree with this contention The fact that proceedings may be directed against a person who has defamed the Courts generally is no reason for holding that he may not be proceeded against for contempt of Court Criminal proceedings as well as contempt proceedings lie against a person who has committed contempt of Court by indulging in illegitimate criticism of the conduct of a particular judge and we see no reason in principle for holding that where a Court generally has been defamed, proceedings for contempt of Court do not also lie against the delinquent We would therefore observe in this connection that proceedings under section 191 of the Cr P C are initiated by the representative of a Government with the previous sanction of the Governor General in Council or the local Government It is for the Government to decide whether such proceedings be instituted or not If the contention of the learned counsel for the opposite parties is sound then the High Court would be powerless to protect itself in a case where the grossest allegation against the Courts had been made but where the Government refused it might well be for purely political consideration, to sanction a prosecution We are clearly of the opinion that the inherent power of the Court to punish every contempt of Court is a power which is essential in the interest of the administration of justice and that power is not restricted in any degree by the provisions in the Cr P C relating to proceedings which may be instituted with the sanction of the Government where the Courts or His Majesty's judges had been defamed

In our opinion the law upon this matter is not in doubt. It has been so clearly enunciated in a number of decisions to many of which we were referred by the learned counsel for the opposite parties and by the learned Government advocate

'We are therefore clearly of the opinion that neither on general principle nor in a recorded decision is there any support for the contention of the learned counsel for the opposite parties that the Court is not empowered to punish contempt where the alleged contempt consists of a general defamation or aspersion of the Court and not a particular judge in regard to his conduct of a particular case Learned counsel has been unable to cite one single relevant authority in support of his arguments nor has he been able to suggest any cogent reason for differentiating between the cases of a defamation of a particular judge or a particular Bench and the defamation of the Court generally The distinction which he has attempted to draw is in our judgment clearly illogical and unsound

I respectfully agree with the statement and adopt it as representing the correct view of the law The objection taken to the jurisdiction of this Court in the present proceedings has therefore no substance in it and in my opinion must be rejected With regard to the merits of that case I would respectfully adopt the language used by Sir Norman McLeod C J *Emperor v Balkrishna Gopal* 46 Bombay 592 at page 621 and to say that the article published on March 23 was calculated to excite in the minds of the people not only the impression that persons could not get a fair trial at the hands of the Court alleged to be under the influence of executive authorities but also a general dissatisfaction with judicial determination so that the danger was created that the people's allegiance to the laws might be fundamentally shaken and a most dangerous obstruction to the administration of justice created The administration of justice within this presidency has been entrusted to us we have the power in execution of the trust imposed upon us to provide that such dangers, when they arise shall be removed and in exercising these powers we seek not so much to protect ourselves as to protect the people from the evil which will result if their faith in the authority and justice of our tribunals be impaired

The Respondents in this case have made no real attempt to excuse or palliate their conduct They have simply said in effect 'this article is fair comment and we have done no wrong" In such circumstances I think we must inflict upon them some punishment which will bring home to their minds the fact that in our judgment they are entirely wrong and also realisation that their action in publishing the article was in the highest degree improper and deplorable

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repairing ornamenting finishing or otherwise adapting for use for transport or for sale of any article or part of an article

False statement—S 171 G I P C

False trade description—means a trade description which is untrue in a material respect as regards the goods to which it is applied and includes every alteration of a trade description

Ferry includes a bridge of boats pontoons or rafts swing bridge a flying bridge and a temporary bridge and the approaches to, and landing places of a ferry

Fictitious stamp—S 263 (3) I P C

Force—S 319 I P C

Forged Document—S 470 I P C

Forgery—Ss 463 464 expln I P C

Fraudulently—S 25 I P C

Gaming—includes rain gambling

Ganja—is an intoxicating drug being a preparation of the hemp plant

Giving false evidence—S 192 I P C

Good faith—S 52 I P C

Goods—means and includes every kind of movable property

Goonda—includes a hooligan

Government—S 19 I P C

Government of India—S 16 I P C

Gratification—S 161 expln I P C

Grievous Hurt—S 320 I P C

Guardian—means a person having the care of the person of a minor or of his property, or of both his person and property

Habitable room—means a room constructed or adapted for human habitation

Hackney carriage—means any wheeled vehicle, drawn by horses and used for the conveyance of passengers which is kept offered or plies for hire by the hour or day or according to distance

High Court—S 4 (j), Cr P C

House breaking—S 445, I P C

House-breaking by night—S 446 I P C

House trespass—S 442 I P C

Hurt—S 319 I P C

Hut—means any building no substantial part of which, excluding the walls up to a height of eighteen inches above the floor or floor level is constructed of masonry, steel iron or other metal

Illegal—S 43 I P C

Illicit Intercourse—Ss 372 373 I P C

Imprisonment—shall mean imprisonment of either description as defined in the Indian Penal Code

Injury—S. 44, I P C

Inquiry—S 4 (k) Cr P C

Instrument of Gaming—shall include books or registers in which rain gambling wagers are entered all other documents containing evidence of such wagers and anything used as a means of rain gambling

Intoxicating—Drug means (i) ganja bhang or siddhi, charas and every preparation of the hemp plant *cannabis sativa*)

(ii every admixture of and every intoxicating drink made from, any article referred to in sub-clause (1 of this clause, and

(iii) any other intoxicating drink or substance which the Local Government may specify in this behalf by notification, with every preparation or admixture of the same but does not include opium

Judge—S 19 I P C

Judicial Proceeding—S 193 expln I P C

Juvenile offender—means an offender whom the Court after making such enquiry (if any) as may be deemed necessary, shall find to be under sixteen years of age

Keeper of a Lodging House—shall mean the person to whom a license for the reception of lodgers in any house shall be granted

Keeper of a Sarai—includes the owner and any person having or acting in the care or management thereof

Kerosine—means any inflammable hydro carbon (including any mixture of hydro carbon or any liquid containing hydro-carbon excluding motor spirit) which—

(*a*) is made from petroleum and (*b*) is intended to be or is ordinarily used in liquid form for purposes of illumination

Kidnapping from British India—S 360, I P C

Kidnapping from lawful guardianship—S 361, I P C

King's coin—Every coin which is declared to be legal tendered shall be deemed to be king's coin

Land—shall extend to messuages, and all other hereditaments, whether corporeal or incorporeal and to any share thereof

Land or water—S 145 (2) Cr P C

Lawful Guardian—S 361, expln., I. P C

Leading Question—S 141, Indian Evidence Act.

Legal proceeding—means any proceeding or inquiry in which evidence is or may be given, and includes an arbitration

License—means a license granted by a proper authority

Liquor—means intoxicating liquor, and includes spirits of wine, spirit, wine tari pachwai, beer, all liquid consisting of or containing alcohol and any substance which the Local Government may, by noti declare to be liquor

Local Government in Bengal—means the Governor of Bengal

Local Law—S 42, I. P. C

Losing wrongfully—S 23, I P C

Lunatic—means an idiot or person of unsound mind

Lurking House trespass—S 443, I P C

Lurking House trespass by night—S 444 I P C

Magistrate—includes all persons exercising all or any of the powers of a Magistrate

Mail bag—includes a bag box parcel or any other envelope or covering in which postal articles in course of transmission by post are conveyed, whether it does or does not contain any such article

Maintenance order—means a decree or order other than order of affiliation made by a court in the exercise of civil or criminal jurisdiction for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made

Making a false document—S 464 I P C

Man—S 10 I P C

May presume—S 4 Indian Evidence Act

Member of an unlawful assembly—S 142 I P C

Minor—means any person who shall not have completed the age of eighteen years and minority means the status of such person

Misappropriation of property—S 403 expln I I P C

Mischief—S 425 I P C

Month—S 49 I P C

Motor spirit—means any Inflammable hydro carbon (including any mixture of hydro-carbon or any liquid containing hydro carbon) which is capable of being used for providing reasonably efficient motive power for any form of motor vehicle

Motor vehicle—includes any vehicle carriage or other means of conveyance propelled or which may be propelled on a road by electrical or mechanical power either entirely or partially

Movable property—S 22 I P C

Murder—S 300 I P C

Non bailable offence—S 4 Cr P C

Non cognisable case—S 4 Cr P C

Non cognisable offence—S 4 Cr P C

Not proved—S 3 Indian Evidence Act

Offence—S 4 I P C

Officer of police—includes village-watchmen

Omission—S 33 I P C

Open court—S. 352 Cr P C

Opium—includes also poppy heads preparations or admixtures of opium and intoxicating drugs prepared from the poppy

Oral evidence—S 119 Indian Evidence Act.

Ordinary powers—S 36, Cr P C

Pachwai—means fermented rice millet or other grain, whether mixed with any liquid or not, and any liquid obtained therefrom, whether diluted or undiluted, but does not include beer

Person—S 11 I P C

Place—S 4 (q) Cr P C

Pleader—S 4 (r) Cr P C

Police—includes all persons who shall be enrolled in the police force by the Local Government

Police Officer—means an officer in charge of the police station a police officer making an investigation under chapter XIV of Cr P C or any other police officer not below the rank of Sub inspector

Police station—S 4 (s Cr P C

Possession—S 27 I P C

Proclaimed offender—S 4 (2) (ii) Cr P C

Property mark—S 479 I P C

Prostitution—S 373 expln 1 I P C

Proved—S 3 Indian Evidence Act

Public—S 2 I P C

Public document—S 74 Indian Evidence Act

Public Holiday—includes Sundays New year's day Christmas day if either of such days falls on a Sunday the next following Monday Good Friday and any other day declared by the Local Government by notification in the official Gazette to be a public holiday

Public Nuisance—S 268 I P C

Public Prosecutor—S 4 (t) Cr P C

Public servant—S 21 I P C

Rape—S 375 I P C

Reason to believe—S 26 I P C

Re examination—S 137 Indian Evidence Act

Relevant—S 3 Indian Evidence Act

Rioting—S 146 I P C

Robbery—S 390 I P C

Secondary Evidence—S 63 Indian Evidence Act

Sessions Division—S 7 Cr P C

Shall Presume—S 4 Indian Evidence Act

Special Law—S 41 I P C

Special Magistrate—S 14 Cr P C

Stolen Property—S 410 I P C

Sub division—S 4 (u) Cr P C

Subdivisional magistrate—S 13 Cr P C

Subordinate magistrate—S 3, Cr P C

Summons Case—S 4 (b) Cr P C

Theft—S 378 I P C

Thug—S 310 I P C

Trade Mark—S 478, I P C
Undue influence—S 171 C, I P C
Unlawful assembly—S 141 I P C
Using a false property mark—S 481 I P C
Using a false trade mark S 480 I P C
Valuable security—S 30, I P C
Vessel—S 48 I P C
Voluntarily—S 39 I P C
Voluntarily causing hurt—S 312, I P C
Voluntarily causing Grievous Hurt—S 322 I P C
Warrant case—S 4 (w) Cr P C
Woman—S 10 I P C
Wrongful confinement—S 340 I P C
Wrongful gain—S 23 I P C
Wrongful Loss—S 23 I P C
Wrongful restraint—S 339 I P C

VERNACULAR WORDS.

Vernacular	English
-	Reclaimed cultivated
as ehta	Residuary share
Iwab	Illegal cess
Ihi	Half produce rent
Adhiar	One who cultivates on a yearly agreement giving half the crop to his landlord
Ihinastha swatwa	Subordinate tenant's interest.
hha	Shrubs and trees not useful as timber
Agrakara	Tenancy on advance rent (*Dacca*)
Ail	Field boundary boundary line of any plot or land raised boundary mark between fields
Aima	Rent free grant of land
Akhiri	Final list
Alamat	Conventional signs used in maps
Alamulia	Unaccountable
Amaldari Amalnamā	Writ giving preliminary possession
Aman	Winter paddy
Amil	*Disagreement or discrepant*
Anabadi	Uncultivated
Ansa	Share
Ānsik	Proportionate according to respective share fractional
Apan dakhal	Own possession
Āsami	Tenant debtor
Asalha	Invalid
Āsli	Old formed lands main land
Asthayi	Not permanent temporary
Atra swatwa	*This interest*
Āus	A kind of paddy that ripens in Bhadra
Awal	First class
Labad (pro bābat)	Previous holder of a tenancy (Jalpaiguri).
Badal sutra	By virtue of exchange
Ba lar	Correction mistake.
Bagicha	Garden

Vernacular	English
Ba hal	Confirmed
Ba hali	Revenue-free, confirmed not resumed
Baid	Low lands running like channels through jungly areas and cultivated (Dacca and Mymensingh)
Baidyottar	Lands granted rent free to physician or Baidya family
Baishnavottar	A kind of rent free tenure.
Bakaya	Arrears
Balu	Sand
Ba nam	In the name of belonging to
Bandhakdata	Mortgagor
Bandhakgrihita	Mortgagee
Bandhak sutra	By virtue of mortgage
Bandh	Embankment general) Water Reservoir (Western bengal)
Bandobast	Settlement
Bankar	Pent for gathering wood etc
Bantak sutra	By virtue of partition
Baor	Low lands running like channels through jungly areas and cultivated.
Barat	Cross reference
Bar burdari	Travelling charges (an abwab)
Barga	Produce paying tenancy
Barga dagi	Square-plot surveying
Bari	Homestead
Basat	Homestead
Bastu	Homestead land
Barsha	Low land rice, also land suitable for such rice.
Basat praja	Homestead tenant.
Bata dag	A plot with a fractional number
Batar	Same as ... (Dacca)
Batil	Void
Batwara	Partition
Bay	Seller or vendor
Bazyafti	Resumed
Bazyafti nishkar	Resumed rent free
Bazyafti jogya nishkar	Rent free (resumable)
Be-a ni dakhl	Unlawful possession

Vernacular	English
	Forced labour a service tenureholder who renders menial service (Mymensingh)
ıma, be-namı	Transaction in the name of another
	The person in whose name such a transaction is made
jal ithil	Out of serial order
abita	Informal not certified
h Bhag	Produce rent
Bhagchasi	Cultivator of a Bhag tenancy
Bhadai	*Autumn crops*
Bhāgottar	A rent free tenure
Bhag khazana	Literally rent in kind but in Rajshahi it means a tenancy where the rent is a quarter of the produce *plus* a money rent
Bharat Samrat Sri Sri Bharateswar Sarkar Bahadur	Emperor of India
Bhatan	Service tenure of a ministerial employee (Rajshahi)
Bhita	High land
Bhiti	Raised land
Bhuti	Cash advance given to an Ādhiar (Jalpaiguri)
B ba h	Disputed
Bib dha swatwa	Miscellaneous rights
Bichan ka bā (Rajshahi) Bichra jala	Seed bed
Bigraha	Idol
Bikray	Sale
Bikretā	Vendor
Bil	Marsh
Bil gashti Chakaran	A service tenure held on condition of performing service not connected with watch and ward as distinct from rangasti chakaran (Midnapore)
Bi esh anushanga	Special incidents (of a tenancy)
B st rit B tāng	In detail

Vernacular	English
'B' number	Number in Collector's general register of revenue free properties called Register B"
Boro	A kind of pad ly
Brahmottar	Rent-free tenure
Brata bhiksha	A kin l of 'rent free tenure (Bakarganj)
Britti	A rent free grant
Bujh irat	Local exj lanation
Chah iram	Fourth class used in classifying lands in un lulating country
Chak	A plot in the Th kbust map
Ch karan	A service tenure
Ch la	Cultivated high land (banks of a tank)
Ch inda	Fixed survey station
Chandina	The hol ling of a shopkeeper
Char	Alluvial lan l
Char u	Right of grazing
Charch i	A revision of the rent demand intermediate between two regular settlements
Ch si praja	Cultivator
Chat in	High fallow land
Chauh i lh	Boundary
Chhan bari	Short thatching grass (Jalpaiguri)
Chhapi	Concealed
Chhara bari	Deserte l homestead site
Chh irti	Aban lonment (of hol lings)
Chhit ar izi	A block of a mauza separated from the parent mauza
Chirigi	A kind of rent free land
Chirasth iyi	Herital le an l not hel l for a l mite l period.
Ch th i	Paper showing measurement of fiel ls
Chukanidar	Rent paying tenant below a jotedar (Jalpai guri)
Dag	A fiel l plot
D imi	Permanent
D har	Path
D hi	Lands formed out of old fallows yiel ling minor crops at intervals and having no *ails* (Mi lnapore)
Dakhl	In the possession of
Dakhlkar	Occupant also possessor of an interest.

Vernacular.	English
Dakhli swatwa bisishta	Possessing rights of occupancy
Dakhli sawtwa sunya, bihin	Not possessing rights of occupancy
Dakhila	Rent receipt
Dakhil kharij	*Mutation*
Dān bikray kshamatā prapta	Transferable
Dān bikray kshamatā rahit	Not transferable
Dang	Abbreviation of 'darun' which means on account of or 'dakhl' which means 'in possession of"
Dangā	Tanks excavated in a *bil* for preserving fish (Dacca) High arable land
Dan sutra	By virtue of gift
Dar	Subordinate
Darā	Water channel (Western and Northern Bengal)
Darwast	*Entire*
Das-sala	Decennial (settlement)
Dāy sudi, (khai khalāsi)	*Usufructuary mortgage*
Debottar	Dedicated to God
Digar, Lagar, Dahar	*Cow path (Midnapore)*
Degi char	Sand bank submerged at ordinary high tide
Dihat hissa	*Share in a mauza or kismat (Mymensingh)*
Dendar	Judgment debtor
Dhaki	Produce-paying tenancy (Dacca)
Dhala	Uncultivated sloping land (Midnapore)
Dhani	Rice land
Dhanya kar ri	Produce paying tenancy
Dhol shuhrat	Proclamation by beat of drums
Dhulat krishi (Rabi)	Crops that are gathered in Falgoon and Chaitra
Diara	Alluvial formations
Diara mahal (taluk)	Estate formed by resumption of alluvial accretions
Dighali	A kind of tenure with fixed rent (Mymensingh)
Ding	An abbreviation for 'Digar', means "and others"
Doem	Second quality (land)
Doem kanun	Regulation II of 1819

Vernacular	English
Dofasli	Twice cropped
Dahala	Low arable land (Jalpaiguri)
Daul	Statement of rent or revenue
Ek fasli	Once cropped
Ekun	Total
Ekwal	Amalgamated statement
Elāka	Jurisdiction
Ewaz sutra	By virtue of exchange by exchange.
Fard	List
Fasl	Crop
Fasl mukhi	Yearly assessment of rent on the part of a holding which bears crops (Midnapore)
Faut Firar	Dead and absconding
Fauti	Intestate property (*see* above)
Fazil	Excess
Firari	Abandoned relinquished
Fihrist	Index
Gair mukarrari	Rate of rent not fixed
Gar	Average ditch
Gar bandobasti	Unsettled
Gurla k patit	Unculturable fallow
Gati	A tenure in Faridpur, Jessore and Khulna
Giri (Jalpaiguri)	The person under whom an adhiar (*q v*) holds lands
Girwi	Mortgage (Mymensingh)
Gochar or gobām	Pasture land
Gumashta	Agent
Gopath	Cattle track
Goshwara	An abstract of the rights, areas and rents shown in records
Gram kharchā	An abwab expenses of the zamindar s mufassal staff totalled and assessed on the raiyats at so much per rupee of rent.
Gunia	Offset scale
Guz rat	Through
Haimantik	Winter
Hajat jama	Rent in abeyance.
Hak	Right
Hakiat	Tenure

Vernacular	English
Hāl	Present, recent, the commonest measure of land (Jalpaiguri)
Hālat	Path (village highway, broader than a path) (East Bengal)
Hāli bichrā	Seed bed
Hāola (pr. Hawāla)	A charge
Hār mukarrari	Rate of rent fixed in perpetuity (Midnapore)
Har rakm	Rent which is neither cash nor produce (Midnapore)
Hāsil	Cultivated lands
Hāsil zamin	Land under cultivation
Hibāyat	Relating to a gift
Hibānāma	Deed of gift
Hisab prithak	Separate account
Hissa	Share
Huzuri raiyat	One who pays rent direct to landlord's main cutchery instead of to local tahsildar or mandal
Ijāra	Farming lease
Ijmāli	Joint undivided
Izā	Continuation
Izāfa	Increase, additional rent
Istifā	Surrender
Jāisudi (pr. Jirsudi)	Usufructuary mortgage
Jazira (char)	Island thrown up in navigable river
Jal	Rice land (Midnapore)
Jali	Marshy land, water channel
Jali bhiti	High land where paddy seedlings are grown
Jāli	A kind of paddy grown on flooded fields (Mymensingh)
Jalkar	Fishery right or rent
Jal sechan	Irrigation
Jamā	Rent
Jamābandi	Rent-roll
Jamā māf	Non-rent paying, generally according to local custom (Midnapore)
Jamār jogya	Liable to payment of rent
Jampāi	Canal or channel for irrigation purposes and leading out of a river (Jalpaiguri)

Vernacular	English
Jan	A narrow water passage (Mymensingh)
Janch	Check of the record
Jarip	Survey chain
Jautuk	Rent free grant at the time of marriage (Dacca)
Jinswar	Crop statement
Jot	A form of tenancy
Kabuliyat	Counterpart of lease
Kaimi mukarrari	Permanent tenancy at fixed rent
Kaimi	Permanent In Bakarganj and Faridpur this connotes permanence of rent as opposed to chirasthayi *q v* which refers to the duration of the tenancy
Kali	Cultivated uplands (not classed as dahi) (Midnapore)
Kami	Shortage
Kanda	High land (Mymensingh)
Kanta	Dividers
Karshi	A cultivating holding
Karari	Fixed used also in regard to land which has not been diluviated
Kat kabala	Mortgage conditional sale
Khairat	A kind of rent free
Khai khalasi	Usufructuary mortgage
Khatila	Threshing floor
Khazina	Rent
Khazina adin pradan nai	Rent not being collected
Khazana briddhir jogya	Rent liable to enhancement
Khazana dharjya nai	Rent is not settled
Khazinar jogya	Liable to payment of rent
Khamar	Lands in immediate possession of landlords
Khas khamar	Threshing floor Own cultivation of a landlord
Khanapuri	Preliminary record writing
Khandit kharid	Purchased portion
Khana i khuda	Mosque, literally House of God.
Khanit patit	Literally "excavations and waste," unassessed waste
Kharid sutre	By virtue of purchase

Vernacular	English
Kharija	Separated independent taluk
Khas	One's own, private, also the property of Government (e g, khas mahal Government estate)
Khasra	Draft (in rough) field statement
Khata	Abbreviation of khatian
Khatak	Debtor
Khatian	Record of rights
Khet	Field
Khet bant	Field by field
Khewat	The khatian of a proprietor or tenureholder
Khud	Personally, homestead land (Rajshahi)
Khurd	Small
Khush dakhl	Permissive possession (Mymensingh)
Killabandi	See 'Parg la'
Kism	Description kind
Kismat	Village
Kist	Instalment of rent or revenue
Kistibandi	Payment by instalments
Kistwar	Cadastral survey
Kita	plot
Kol	An arm of a river either connected with or separated from the main channel
Kol raiyat	Under raiyat
Korfa raiyat	Ditto
Kreta	Vendee
Lak patit	Culturable fallow
Laggi	Measuring rod
Lakhiraj	Lands held revenue free
Lakhirajdar	Revenue-free proprietor
Lapta paiwasti	Accretion
Lath nal	Measuring rod
Mablag	Total (amount or sum of
Madhya swatwa	Tenure (literally intermediate right)
Madhyaswatwadhikari	Tenureholder
Mahatran	Land given for a religious purpose, a kind of rent free granted to a non Brahmin
Mahakup (pr Mahukuf)	Remission (Midnapore)
Mahal	Estate
Mai 'cess'	Including cess

Vernacular	English
Pan baruj	Betel garden
Panchaki	Quit rent fixed in perpetuity (Midnapore)
Paraspar ansa	Proportionate share individual share of different people among themselves
Parcha	Copy of preliminary khatian given at bujharat
Parimana	Area
Parkhatu	Incomplete rent receipt
Partal	Check line check
Patit	Waste land
Patit abad	Reclaimed land
Patri	A flat ruler
Patta	Lease.
Pattan	Settlement lease.
Ping	Abbreviation for pisar i son of
Pirpal	Endowment in the name of a Muhammadan saint
Praja	Tenant a produce paying tenant (Jalpaiguri)
Praj bili	Held by tenants
Pratha	Custom
Puratan patit	Old fallow
Rabi	Spring crops
Raikhik chitra	Tenure tree
Rajaswa	Revenue
Rakm	Class.
Rakba	Area
Rasadiya	Proportionate.
Rasid	Rent receipt.
Rihai	Exemption
Rihan	Mortgage
Riwaj	Custom
Ruka	Incomplete rent receipt
Roznamcha	Diary
Rubakar Rubakari	Written proceedings
Rupa, Ropa Ropan	Transplanted
Sabik	Old
Sabik hal	Index of old and new khatian numbers (East Bengal)
Sadar jamā	Revenue

Vernacular	English
Sadharaner byabahārya	Used by the public
Saham	Share, allotment (in partition)
Sahari	Medium arable land (Jalpaiguri)
Sahi muhr	Sealed and signed (certified)
Sakin	Resident of
Salami	Premium for recognizing a transfer, etc
Sali	Rice land (West Bengal)
Sāliana	Receipt, yearly
Shamil jama	Joint rent
Sanad	A deed of grant.
Sanayat patit	Old fallow
Sanja	Produce rent
San katari	A kind of settlement for a season's crop (Rajshahi)
Sarasari	An ordinary raiyati holding (Rajshahi)
Saru jama	Quit rent (Rajshahi)
Sashmahi	Six monthly (rent)
Sebait	Priest who arranges for the worship of a diety and manages the endowment.
Sarba mot	Grand total
Sharik	Co partner
Shikasti	Diluviated
Shikasti paiwasti	Reformation
Sibottar	Rent free tenure Brahmottar
S[illegible]al	Arrange in due order
Sikal	Chain
Shikami (Shikmi)	Subordinate Auxiliary shikmi line is the survey line from which offsets to field boundaries are taken
Shikami Taluk	A subordinate Taluk or Tenure
Simana	Boundary
Smaraklipi	Amin's memorandum on the first page of khasra volume for orders on doubtful points
Soim	Third class Used in classifying lands in undulating country
Sreni	Status (Midnapore)
Sthit	Assets

Vernacular	English
Suchipatra (dager)	Index (plot)
Sud bandhak	Usufructuary mortgage
Suna	Uplands (West Bengal)
Swasthal pattasti	Reformation *in situ*
Swatwa	Interest in land tenancy
Swatwadhikari	Owner of the interest
Tafsil	Table list
Tagibi (or takawi)	A kind of mortgage where the mortgagee pays half the produce of the land to the mortgagor but when the principal is paid the land goes back to the mortgagor
Tahsil	*Collection*
Taidad	Statement filed under Regulations XIX and XXXVII of 1793 and VIII of 1800 claiming Lakhiraj (Badshahi or non Badshahi) title
Talabana	Process fee
Talab baki	*Account of demands and arrears*
Talika	List
Taluk	Lit a subordinate interest a tenure, in Jalpaiguri a territorial unit corresponding to the Revenue Survey mauza of other district
Tamil	Carrying out of an order
Tan	High land (Mymensingh)
Tanka	Produce rent
Tankhi	Survey of excess land (Rajshahi)
Taraf	Portion of an estate *e g.* bara taraf chota taraf
Tarmim	Correction
Tartib	Arrangement of record
Tasdik	Attestation
Tek	High fallow land (Dacca)
Tengar	Hillock
Thana 'number'	Serial number of a village in a thana
Thika barga	See draki
Thika mukarrari	Rent fixed in perpetuity for a block of land let out without measurement (Midnapore)
Uchhhed	Ejectment

Vernacular	English
Udbastu	Lands adjoining homesteads and locally known as such
Uparistha (swatwa)	Superior (or landlord d interest)
Utsarga	A rent free grant
Yād dasht	Memorandum
Zabita	Authenticated certified
Zamindar	Proprietor
Zaupa 1	Wife of
Zer	Continuation
Zimma	In the custody of
Ziraat	Proprietor s private lan ls

Latin words and Phrases.

Ab initio—From the beginning *Alias*—Otherwise **Amicus Curiæ** —Friend of the Court, who informs the Court when doubtful or mistaken of any fact or decided case *Animus*—An intent, *animo*, with an intent

Capax doli—Capable of committing crime *Compos mentis*—Of a sound mind *Curia advisari vult*—A deliberation which a Court sometimes takes where there is any point of difficulty before it gives judgment in a case

De die in diem—From day to day *De facto*—In fact opposite to *de jure*, of right *De jure*—By right *De minimis non curat lex*—The law cares not about trifles *De novo*—Afresh *Dies non*—A day on which Judges do not sit *Doli incapax*—Incapable of committing crime

Enceinte—With child *En masse*—In a body *En route*—On the way *En suite*—In company *Ex cathedra*—With the weight of one in authority *Ex Curia*—Out of Court *Exempli gratia*—For the purpose of example *Ex necessitate legis*—From the necessity of law *Ex officio*—Officially, by virtue of office *Ex parte*—A proceeding by one party in the absence of the other *Ex post facto* (*jure*)—From a law made after the thing prohibited was done *Extra vires*—Beyond powers

Feme—A woman *Feme covert*—A married woman *Feme sole*—An unmarried woman *Fœticide*—Criminal abortion *Fœtus*—A babe in the womb *Forum*—A Court the Court to the jurisdiction of which a party is liable *Forum competens*—The Court having jurisdiction over the matter, *Forum incompetens*—A Court not having such jurisdiction

Gratis dictum—A voluntary statement **Homicide per infortunium**—By misfortune, where a man doing a lawful act without any intention of hurt unfortunately kills another *Homicide se defendendo*—Where a man kills another upon a sudden affray merely in his own defence, or in defence of his relations and not from any vindictive motive

Ignorantia facti excusat Ignorantia juris non excusat—Ignorance of the fact excuses ignorance of the law excuses not *Incapax doli*—See Doli incapax *In extenso*—From beginning to end at full length *In extremis* —At the last gasp, at the point of death *Infra*—Below *In loco parentis* In the place of a parent *In pleno lumine*—In the light of day, in public *In posse*—In a state of possibility See *In esse* *In re*—In the matter of *In statu quo*—In the condition in which it was, in the former state *Inter alia* —Amongst other things *Inter se*—Among themselves *In toto*—Altogether, entirely **Ipse dixit**—He himself said it a bare assertion resting on the authority of an individual, dogmatism *Ipso facto*—By the very fact itself *In parro*—In part *In esse*—Actually existing

Kleptomania—Insanity in the form of an irresistible propensity to steal

Lex—Law *Lex apostata*—A thing contrary to law. **Lex fori**—The law of the place of action **Lex loci**—The law of the place *Locus in quo*—The place in which **Locus pœnitentiæ**—A place or chance of repentance *Locus regit actum*—The place governs the act, that is the act is governed by the law of the place where it is done *Locus standi*—The right of the party to appear and be heard on a question before any tribunal

Mala in se—Acts which are wrong in themselves whether prohibited by human laws or not as distinguished from *mala prohibita* as Murder and perjury *Mala prohibita* Wrongs which are prohibited by human law, but are not necessarily *mala in se*, or wrongs in themselves, as in playing at unlawful games &. **Modus operandi**—Manner of operation *Mutatis mutandis*—With necessary changes in points of detail

Nemo debet bis puniri pro uno delicto—No one ought to be punished twice for the same offence *Nemo debet bis vexari pro una et eadem causa*—No man ought to be twice put to trouble for one and the same cause *Nemo præsumitur malus*—No one is presumed to be bad *Ne plus ultra*—Nothing further, the uttermost point **Nolle prosequi**—To be unwilling to prosecute *Non compos mentis* Not of sound mind *Non culpa nisi mens sit rea*—There is no guilt unless there be a guilty intention **Non feasance**—The offence of omission *Novus homo*—pardoned criminal

Obiter dictum—An opinion of a Judge not necessary to the judgment given on record, in contra distinction to a *judicial dictum* which is necessary to the judgment The latter is of such greater authority than the former, because delivered upon deliberation, while an extra judicial opinion is no more than the saying of him who gives a *gratis dictum*

Pari passu—by the same gradation equally, without preference *Per contra*—Contrariwise *Per curiam* By the Court *Per incuriam*—through wand of care *Per infortunium*—By mischance *Post diem*—After the day **Post mortem**—After death as a post mortem examination of a corpse by a surgeon in order to discover the cause of death *Primum mobile*—The source of motion *Pro forma*—As a matter of form *Pro tempore*—For the time being

Qua—In the character of —

Res gestæ—The things done and words spoken in the course of a transaction The phrase is commonly used in connection with evidence and the admissibility in evidence of words spoken

Semble Lit It seems, used in reports to show that a point is not decided directly but may be inferred from the direction *Semper idem*—Always the same *Seriatim*—Severally and in order *Sine die*—Indefinitely without a day being fixed **Sine qua non**—An indispensable condition *Statu quo*—The state in which the existing state of things any given date, *Sub judice*—Under consideration *Sui generis*—Of its

kind *Suo motu*—Of one's own motion *Supra*—Above This word occurring by itself in a book refers the reader to a previous part of the book like ante as opposed to *infra*

Ultra vires—Beyond power

Venue—The place whence the jury are to come for trial of causes, jurisdiction *Vexata quæstio*—An undetermined point *Vis*—Any kind of force or violence to person or property *Vis major*—Inevitable accident, irresistible force

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MISCELLANEOUS FORMS

Application of Bail

In the Court of the Magistrate of Sealdah
In the matter of the application for bail and
In the matter of Emperor
Versus
Kanai Thakur and others Accused
Secs 400 and 401 I P C

The humble petition on behalf of the accused Nagendranath Chuckerbatty

Most Respectfully Sheweth —

1 That your petitioner was arrested on the 5th of August, 1923 by Inspector Hem Chandra Lahiri and he is still kept in custody inspite of repeated oral prayers made on his behalf for enlarging him on bail

2 That at the time of your petitioner's arrest a thorough search of the house in which your petitioner resided was made by the said Inspector Hem Chandra Lahiri but nothing suspicious or incriminating was found

3 That your petitioner is a family man having his wife and mother and that they all along lived with a respectable relation of theirs and that your petitioner has got no previous conviction

4 That your petitioner is a motor mechanic and a driver and holds good certificates of character from various European and Indian gentlemen whom your petitioner has served for ten years and who have all been satisfied with the discharge of his duties

5 That your petitioner is now in custody

6 That your petitioner is in very weak state of health in the lock up and he thrice fell in a swoon without having anybody to look after him and after this an application was made to the police for bail but the same was refused

7 That your petitioner is ready and willing to furnish substantial security

Your petitioner therefore prays that he may be enlarged on bail

And your petitioner as in duty bound, shall ever pray

Application for maintenance

Case No Mis 1501 of 1925 Sec E Town

In the Court of the Addl Chief Presy Magistrate N D Calcutta
Zamala Khatum vs. Sk. Sobraty

An application under section 488 Cr P Code

The humble petition of Zamala Khatum above named most respectfully sheweth —That your humble petitioner is the legally married wife of the defendant who earns more than 40 Rs per month That since after marriage the defendant lived within your honour's jurisdiction and used to molest and assault your humble petitioner after being drunk That at last the defendant had driven away your humble petitioner about six months ago and since then has refused to maintain his wife though he has sufficient means to maintain her Besides the defendant molests the complainant whenever they met and that defendant being a man of loose character follows and chastises his wife where she goes and takes shelter Under the circumstances your humble petitioner prays for notice upon the defendant to show cause why he should not maintain his wife Complainant's marks X Calcutta Sd/- Pleader 2 1 8 25

Application for revision before a Sessions Judge

In the Court of the Sessions Judge of Darjeeling
In the matter of an application for revision
The humble petition of Lachman Dass
Puranchand of Binan Bustee Darjeeling

Most respectfully sheweth

1 That the petitioners are a firm of merchants carrying on business in Darjeeling Sikkim Tibet carrying on military contract works and have house property of their own

2 That the petitioners are the owners of holding No 5 Biman Bustee near Darjeeling Bazar which consists of seven blocks and which stands in the Zamindary of Burdwan Raj covering 52 poles and these buildings were in existence from long before the Darjeeling Municipal Act, 1900. came into operation

3 That the Darjeeling Municipality requisitioned the petitioner on 17 1 1925 to carry out certain works of improvement to the said holding No 5 which the petitioners took up in right earnest but the requisition also consisted in the demolition of all the latrines and the kitchen and bath room and the privy of the block No III and the Municipality insisted on carrying them out at once and refused their prayer for time

4 That the Municipality turned a deaf ear to all their entreaties even in face of the fact that there is no public latrine within convenient dist of the house and started a case against them

6 That Mr N Sen M I I holding special powers delegated by

Deputy Commissoner, Darjeeling U/S 6 (8) of Act III of 1884 has been pleased to order on 2 2, 27, that the holding is prohibited for the purposes of human habitation with effect from 14 2 27 U/S 244 X of the Bengal Municipal Act as amended in its application to Darjeeling by Act I of 1900

7 Being aggrieved by the aforesaid order, the petitioners beg leave to move Your Honour on the following amongst other grounds •

Grounds —

(a) For that the learned Magistrate has erred in law in taking for granted that section 244 X of the Bengal Municipal Act as applied to Darjeeling is applicable to buildings in existence before the section came into operation on the 7th March 1900 having got retrospective effect

(b) For that the learned Magistrate did not give due consideration to the general principle of Equity as laid down in the several ruling that a restrospective operation is not to be given to a statute lest it may impair existing rights and obligations

Your petitioners therefore pray that your honour may be pleased to call for the records of the case and to issue a Rule on the Deputy Commissioner of Darjeeling to show cause why the matter should not be reported to the Hon ble High Court under S 438 Cr P C for the quashing of conviction

And your petitioners as in duty bound shall ever pray.

Applications for revision before the District Magistrate

In the court of the District Magistrate of Khulna

Petition for reference to the Hon'ble High Court under section 438 Cr P C

The humble petition of Nepal Chandra Basu son of Beni Madhab Basu of village Ahamagore P S Bagerhat, District Khulna Most Respectfully Sheweth —

That your honours humble petitioner purchased some lands from Mathura Nath Basu in an auction sale and from the time of the purchase your petitioner has been possessing the same at first by settling it with tenants and lately in khas possession

That in the recent settlement proceedings which have been finally published your petitioner has been recorded to be in khas possession of the lands which bear the plot number 119 in Parcha

That the accused being baffled in their endeavour to take settlement of the lands from your petitioner had at last taken the law into their own hands and on the 20th of May last accused Narendra Nath Ghose along with some other people trespassed on your petitioner's land and began to erect a hut therein

That your petitioner tried to oppose them but was driven away with threats of violence

That therefore your honour's petitioner lodged a complaint before the S D O of Bagerhat who summoned the accused after an enquiry by the president of the local panchayet who reported the occurrence to be true and found possession of the land with your petitioner

That the case was thereafter made over to the file of the Sub Deputy Magistrate Mr M N Chowdhury who after examining the witnesses have been pleased to acquit the accused by his Judgment dated 4 9 26

That being aggrieved by the said order of acquittal your honour's petitioner begs to file this petition before your Honour and prays that your Honour will be pleased to call for the records of the case under sec 435 Cr P C and on perusing the same send up the records to the Hon'ble High Court under section 438 Cr P C with a recommendation that the order of acquittal be set aside on the following amongst other grounds —

(i) For that the learned Magistrate did not write out the Judgment according to the provisions laid down in Sec 367 Cr P Code

(ii) For that the learned Magistrate has not at all mentioned anything about the finally published parcha which according to law raises a very strong presumption of possession

(iii) For that the learned Magistrate was wrong in stating that because no dakhila has been produced by the complainant with regard to the land to prove his settlement with tenants it is conclusive that your petitioner has no possession

(iv) For that the learned Magistrate was wrong in holding that because the accused is a co sharer of the previous owner of the land with regard to the properties he must have been in possession of the disputed land

Your honour's petitioner therefore prays that your honour will be pleased to make the recommendation as prayed above

And for this your honour's petitioner as in duty bound shall ever pray

Petition of appeal before Sessions Judge

In the Court of the Sessions Judge at Darjeeling
In the matter of a petition of appeal and in the matter of

Surbahadur Lama Convict
Appellant

vs

Manbahadur Limbu Complainant
The humble petition of Surbahadur Lama
accused and convicted under section 420
I P C the appellant in this case

Most respectfully Sheweth —

1 That the complainant in this case wanted to have a gun, approached the petitioner who is a pleader's clerk to try for a license and a

him And it was settled that the complainant would pay Rs 50/- before and Rs. 50/- more after the transaction was complete.

2 That as instructed by the complainant, the petitioner wrote out the petition for the license for the gun and filed it with the Deputy Commissioner, Darjeeling for favour of granting the license The complainant paid Rs 50/- in instalments to the petitioner as mutually agreed upon as his remuneration

3 That the petition for the license was ultimately rejected by the learned Deputy Commissioner on the 7th October 1925

4 That the complainant thereafter wanted the petitioner to refund the said sum of Rs 50/- which however the petitioner declined to do as it has been paid to him by way of *remuneration for his troubles*

5 That the case was of purely *civil nature* but the learned Hony Magistrate was pleased to hold the petitioner criminally liable under section 420 I P C which is not warranted by law and sentenced him to undergo 3 months R I and to pay fine of Rs 50/ and in default, to undergo 3 months R I in addition

6 That the petitioner being aggrieved by this conviction and sentence begs to prefer this appeal to Your Honour and prays that the record of the lower court may be kindly called for and after hearing the petitioner Your Honour may be pleased to set aside the conviction and *sentence on the following amongst other grounds*, and pending the decision of this appeal the petitioner may be kindly released on bail

Grounds —

(1) For that the case was wholly misconceived by the learned magistrate

(2) For that the case is nothing but of purely *civil nature* for which no criminal liability could be saddled on the petitioner

(3) For that learned magistrate was wrong in holding that the petitioner had committed an *offence under section 420 I P C* as the prosecution has wholly failed to prove an *intention* on the part of the petitioner to *deceive the complainant at the time* of receiving the money from him

(4) For that the weight of the evidence is against the prosecution

(5) For that in course of the trial the complainant was twice examined to *fill up gaps* in the prosecution evidence which was objected to by the petitioner but the objection was over ruled by the learned magistrate

(6) For that the trial of the case was in camera in the private office of the Hony Magistrate far off from the cutchery buildings and the petitioner was very much handicapped in his defence

For that the *sentence* is at least too severe

Petition of appeal before the High Court.

In the High Court of Judicature at Fort William in Bengal
Criminal Appellate Jurisdiction

In the matter of a petition of Appeal of
Banku Behari Bose Accused Appellant,

Versus

King Emperor

To

The Hon'ble Sir George Claus Rankin Kt Chief Justice and his companion Justices of the said Hon'ble Court

The humble petition of the above-named appellant

Most Respectfully Sheweth —

1 That the petitioner has been in possession of a plot of land from the time of his father and has been enjoying and possessing the same *over 25 years*

2 That the petitioner settled the said land with a tenant *Babu Narendra Nath Ghosh who erected a hut* there in the month of Justha, 1333 B S

3 That when the said hut was erected by the petitioner's tenant a criminal case was instituted by one Nepal Chandra Bose against the petitioner and his said tenant Babu Narendra Nath Ghosh under sec 447 I P C and the case was tried by Mr M N Chowdhury Sub Dy Magistrate of Bagerhat in the district of Khulna

4 That at the time of the trial of the said criminal case the petitioners searched the box in which his father used to keep title-deeds and rent receipts and other important papers and found in the box an Amalnamah dated the *26th Agrahayan 1307* and two rent receipts of *1308 & 1309 B S* granted by *Mathura Nath Bose and others in favour of the late Babu Ambica Charan Bose* the father of the petitioner and he filed them before the said Sub Dy Magistrate bonafide believing them to be true and genuine

5 That the said Sub Dy Magistrate after taking evidence came to the conclusion that the complainant was not in possession of the said property and so acquitted the accused under Section 245 Criminal Procedure Code

6 That the said Sub-Dy Magistrate did not discuss the question of title based on the said Amalnama and the rent receipts and the documents did not in any way influence the said Sub Dy Magistrate in acquitting the petitioner accused

7 That thereafter the complainant Nepal Chandra Bose made application to the District Magistrate Khulna for referring the said criminal case to the Hon'ble High Court under Section 438 Cr P

Code which the petitioner submits that no such application lies against an order of acquittal

8 That the learned District Magistrate did not refer the case to the Hon ble High Court as was prayed for but granted sanction under Sec 476 Cr P C to prosecute the petitioner for committing an offence under Sec 471 I P C holding that the said Amalnama and rent receipts were forged though nothing was mentioned in *the application before him by the complainant to that effect* and though there was no evidence showing that the petitioner knew or had reason to believe at the time of their use that they were forged

9 That thereafter the said District Magistrate of Khulna lodged a formal complaint on the basis of which the present prosecution was started by Mr Amulya Krishna Dutta Magistrate 1st class Bagerhat who after inquiry committed the petitioner accused to the Court of Sessions Khulna

10 That the learned Sessions Judge Mr K K Sen *tried* the said case with the assistance of a Jury and though he was doubtful if the prosecution had succeeded in making out that the accused knew or had reason to believe that the documents were forged he accepted the unanimous verdict of the Jury that the petitioner accused was guilty under *Sections 467/471 I P C and on the 23rd day of April 1927* convicted and sentenced your petitioner to undergo rigorous *imprisonment for one year*

11 That being aggrieved by the said conviction and sentence your petitioner begs to prefer this petition of appeal on the following amongst other

Grounds —

I For that the *Sanction of the District Magistrate is irregular and illegal*

II For that there being no evidence to the effect that the accused knew or had reason to believe at the time of the use that the documents were forged the conviction is bad in law

III For that the learned sessions Judge misdirected the Jury when he said that the question referred to in ground No II is a question of fact

IV For that the sentence is at least too severe

The petitioner therefore prays that your Lordships may be pleased to admit the appeal and release your petitioner on bail pending the hearing of the appeal and after calling for the records and hearing your petitioner's lawyer set aside the conviction and sentence passed on the accused and to pass such further or other orders as to your Lordships may seem fit and proper

And your petitioner as in duty bound, shall ever pray

Application for revision before High Court

In the High Court of Judicature at Fort William in Bengal

Criminal Revisional Jurisdiction

In the matter of an application under section 439 of the Code of Criminal Procedure

And in the matter of
1 Jnanoda Kanta Trivedi,
2 Harish Toor,
3 Nrisinha Bagdi,
4 Kali Bagdi   Accused—*Petitioners*

Versus

Purna Chandra Sinha   Complainant
Opposite party

To

The Hon'ble Sir Nalini Ranjan Chatterjee Kt
Acting Chief Justice and his companion Justices of the said Hon'ble Court

The humble petition of the above-named accused persons

Most Respectfully Sheweth —

1 That some Lakheraj properties belonged to one Nrityakali Dasi and one Manjari Dasi the wife and brother's wife respectively of one Trailokhyanath Ghose of village Rudrabati in the District of Murshidabad

2 That Road Cess of the said Lakheraj properties fell into arrears and so a Road Cess certificate case No $\frac{140}{1909\ 10}$ was instituted against the said Nrityakali Dasi and Manjari Dasi and the Lakheraj properties were sold through the Court to Babu Rajani Kanta Trivedi the father of the petitioner No 1 on the 16th May 1910 and he took delivery of possession of these properties through Court on the 5th November 1911

3 That on taking delivery of the properties the said Babu Rajani Kanta Trivedi was in peaceful possession of all the properties through tenants, who have been regularly paying rents to the said Rajani Babu

4 That one Netai Pal was the tenant of plot Nos 1 and 2 of the sale proclimation Plot No 1 was 5 cottas and plot No 2 was also 5 cottas. The two plots bore a jama of Rs 2/ On the western part of plot No 2 there are two mango trees, so the said Netai abandoned the western half of plot No 2 as it was not suitable for rearing silkworm cocoons and he was given a reduction of Re 1/ from his rent Thus the western half of plot No 2 was in the khas possession of Rajani Babu the father of the petitioner No 1 and he was possessing the land by taking the mango fruits etc all along

5 That Purna Chandra Sinha, the opposite party complainant borrowed Rs 500/- from the said Rajani Kanta Trivedi by executing a handnote in his favour On Purna's failure to pay off the debt Rajani Babu brought a civil suit against the said Purna in the Court of the 1st Munsiff Kandi, and got a decree for Rs 532/- with costs

6 That on the prayer of the said judgment debtor Purna the Court orderd that the decretal amount should be paid by five equal annual instalments, the first instalment was to be paid in Falgoon 1329 B S and the 2nd instalment was to be paid in Falgoon 1330 B S and so on The Court also ordered that the unpaid decretal amount should bear interest at 12 p c per annum

7 That at the time of the payment of the 2nd instalment the judgment debtor did not deposit the interest along with the instalment amount so the decree holder Rajani Babu prayed for the execution of the entire decree as the judgment debtor made default in payment of interest

8 That the judgment debtor the said Purna Chandra Sinha complainant preferred objection against the execution of the entire decree and the 1st Court granted his objection Then Rajani Babu preferred an appeal against the said order of the 1st Court and that appeal was dismissed in March 1925 and the decree holder was directed to take the decretal amount by instalments

9 That the complainant Purna Chandra Sinha thus elated at his success at the Civil Court intended to put the decree holder into trouble by bringing false criminal case against him

10 That with the said intention the complainant filed a petition on 27th May 1925 before the Subdivisional Officer of Kandi, alleging that he was in possession of a piece of land (part of which is covered by the western half of plot No 2 which is in the khas possession of Rajani Babu) on which he raised a hut for storing rice and that on the 24th of May 1925, the said Rajani Kanta Trivedi gave order to his men to pull down the hut and that they pulled down the hut and carried its materials away

11 That the said complainant Purna Chandra Sinha alleged that he purchased the disputed plot of 6 cottas along with another plot of 15 cottas from one Protap Chandra Roy for Rs 32 only in 1303 (1896) He alleged that there was a handnote of Rs 21 in favour of him executed by Protap Chandra Roy and that in order to pay off the dues of the handnote Protap executed that kobala It further transpired that Trailokhynath Ghose the husband of Nrityakali Dasi, mortgaged the said plot along with another plot of 15 cottas to the said Protap Chandra Roy alleging them to be his Lakheraj properties That as a matter of fact the plot of 6 cottas is not his Lakheraj property, part of it was the Lakheraj of his wife and his brother's wife Nrityakali Dasi and Manjari Dasi respectively.

and the other plot of 15 cottas was the jote land of Trailokhya and the *Lakhrajdars of it* were Keshub Chandra Dutta and Saroda Sundari Dasi.

12 The said Protap Chandra Roy brought a mortgage suit got decree and *in execution* of the decree sold the mortgaged properties and purchased *them* himself in 1895. But he was never in possession of the properties.

13. That after the purchase of Purna Chandra Sinha from Protap, Lakhrajdar *the plot of 15* cottas brought a suit being T. S. No 130 of 1905 *against* the said Purna Chandra Sinha for a declaration that the plot *belongs* to them as Lakhrajdars and that the handnote and kobala *were not* genuine and *were collusive*.

14 That the 1st Court gave a decree to the plaintiffs in that suit and declared *both the handnotes* and kobala to be got up deeds there being no *consideration for* them. That the appellate Court also found them to be collusive deeds in 1905.

15 That *on the* complaint of Purna Chandra Sinha mentioned in para 10 *above*, the Sub Divisional Officer of Kandi summoned the petitioners and *one* Hrishi Kesh Trivedi under Section 147 I. P. C. and the accused were *tried by* Mr. A. K. Serajul Islam, Sub Deputy Magistrate who found them guilty and convicted and sentenced them to pay fines. *The* petitioner No 1 was fined Rs 75 in default one month's rigorous *imprisonment*, the petitioner No 2 was fined Rs 20 in default 3 weeks' rigorous imprisonment. Hrishikesh was fined Rs 30 in default 2 weeks' rigorous imprisonment. the petitioners Nos 3 and 4 were fined Rs 10 each in default one week's rigorous imprisonment.

16 That the petitioners preferred an appeal to Mr. W. S. Addie *the* Magistrate of Murshedabad. He acquitted accused Hrishikesh *Trivedi* but in respect of the other accused he did not interfere and dismissed the appeal in respect of them on the 4th of November 1925.

17 Thereafter the petitioners moved this Hon'ble High Court and a *rule* was issued being Cr. Rev. No 1037 of 1925 and on the 16th February *1926* a Division Bench consisting of Justice C. C. Ghose and Mr Justice Duval made the rule absolute and directed the appeal to be reheard by the Sessions Judge of Murshidabad.

18 That thereafter Mr. A. L. Blank the Sessions Judge of Murshidabad heard the appeal and dismissed it on the 29th June 1926.

Your petitioners being dissatisfied with the said conviction and sentence beg to move the petition on the following amongst other

Grounds —

I For that the judgment of the Court of Appeal below is not in accordance with law.

II For that the learned Judge is wrong in law in not considering at all the alleged document of title of the complainant on which the complainant based his possession.

III For that the learned Judge is wrong in law in not discussing the evidence as to the possession of the land

IV For that the courts below ought to have held that the case was one of civil dispute

V For that the Courts below have not considered the documentary evidence on behalf of the accused persons

VI For that the courts below are wrong in holding that the judgment of the Civil Courts were not admissible in evidence

VII For that it ought to have been held that the petitioners had no unlawful common object.

Your petitioners therefore pray that your Lordships will be pleased to send for the records and issue a Rule calling upon the District Magistrate of Murshidabad and the complainant to show cause why the convictions of and sentences passed upon your petitioners should not be set aside or to pass such other or further orders as to your Lordships may seem fit and proper

And your petitioners, as in duty bound, shall ever pray

AFFIDAVIT

I, Nilkanta Das, son of late Nabin Chandra Das inhabitant of Manigram, Police Station Kandi, District Murshidabad, do hereby solemnly affirm and say as follows —

1 That I am karpordaz of the abovenamed petitioner No 1 and looked after the case in the Courts below

2 That the facts stated in the above petition are true to my knowledge.

Solemnly affirmed this the day of August 1925 before me I certify that I read over and explained the contents to the declarant and that the declarant seemed perfectly to understand them

Commissioner.

Application for Transfer under S 526 Cr P C

In the High Court of Judicature at Fort William in Bengal

Criminal Revisional Jurisdiction

In the matter of an application under Section 526 of the Code of Criminal Procedure and in the matter of

Bholanath Chowdhury ... Complainant—Petitioner

Vs

1 Satish Chandra Ghosh

2 Lalit Mohan Sarkar ... Accused

Opposite—Parties.

To

The Hon'ble Sir Lancelot Sanderson Kt., K C,
Chief Justice and his Companion Justices
of the said Hon'ble Court
The humble petition of the Complainant
above named

Respectfully Sheweth —

1. That your petitioner is the Secretary of the Singtv Kayastha Samaj and as such filed a petition of complaint on 21 8 24 in the Court of the Sub Divisional Officer of Uluberia charging the said accused under Secs 406 and 420 I P C in respect of the money belonging to the said Samaj

2. That on the day the petition of complaint was field the learned Sub Divisional Officer made an observation in open Court that the case was the result of a party feeling said to be in existence between the parties and thus imported his own personal knowledge into the matter and formed an opinion with regard to the case at the very earliest stage thereof

3 That on the same day the learned Sub Divisional Officer allowed Babu Haripada Bhattacharjee Muktear to make submission on behalf of the accused persons although that was objected to by Babu Khagendra Nath Ganguli Vakil appearing for the complainant

4 That on the same day the learned Sub Divisional Officer refused to look into some documents which are to be used as evidence in the case against the accused persons after they were tendered by the complainant s said Vakil

5 That on the 21st day of August 1924 the learned Sub Divisional Officer passed the following order —

Let the complainant prove his case on 3 9 24 '

Thereafter your petitioner applied for subpoenas for the attendance of his witnesses and his application was rejected although his pleader undertook on the petitioner s behalf to pay all expenses to the witnesses as will be ordered by the Court on the next day of hearing

6 That the learned Sub Divisional Officer s order calling upon the petitioner to deposit Rs 100 as travelling allowances for Prosecution witnesses reached the petitioner late on 30th August 1924 and your petitioner on 1st September 1924 appeared in Court and deposited a cheque for Rs 100—on the Lloyed s Bank as he had no time to cash and deposit the money in cash but the learned Sub Divisional Officer characterised it as merely a scrap of paper and your petitioner trying to explain the matter the learned Sub Divisional Officer silenced him saying keep quiet fellow

7 That the accused No 1 is a member of the Udaynarainpur Union Board nominated by the learned Sub Divisional Officer who also sen petitions of complaint to him for enquiry and report. The said acc

was also appointed as Polling officer by the Sub Divisional Officer in the in the last Council Election

8 That in connection with many affairs of the Local Board, Union Board and Thana Charitable Dispensary, your petitioner is not on very good terms with the learned Sub Divisional Officer

9. That the learned Sub Divisional officer recommended one Panchanan Changdar for a membership in the Local Board in place of your petitioner who was the sitting member and some of the members of the Managing Committee of the Kayastha Samaj moved the District Magistrate of Howrah to set aside the learned Sub Divisional officer's recommendation with regard to the said Panchanan Chongdar

10 That one Srinibash Mondal clerk in the Local Board (who is also a clerk in Ulubaria Jail of which the Sub Divisional officer is the Superintendent) stands charged with receiving illegal gratification at the instance of your petitioner and his case is under decision by a Sub Committee of the said Local Board

11 That your petitioner on the 12th day of July 1921 complained against one Gopal Chandra Mondal, Vice-President Singti Union Board (who is also a member nominated by the learned Sub Divisional officer) to the Chairman District Board and he has been warned to mend his ways

12 That one Jatindra Nath Khan was a member of the Singti Thana Charitable Dispensary Committee nominated by learned Subdivisional officer and on the petitioner's motion he had to resign his post as a member of the said committee The said Jatindra Nath Khan is also a member of the Singti Union Board nominated by the learned Sub Divisional officer and your petitioner also made complaints against him to the Divisional Commissioner and others for his removal therefrom

13 That your petitioner moved the District Magistrate of Howrah for the transfer of the above case under Section 528 Cr P C but the learned District Magistrate by his order dated the 20th day of September 1924, rejected the said petition

14 That your petitioner being aggrieved by the said order of the District Magistrate begs to move your Lordship, on the following amongst other

Grounds

(1) For that under the facts and circumstances of the case as stated above the learned District Magistrate ought to have transferred the said case to some other competent Magistrate

Your petitioner therefore prays that your Lordships may be pleased to call for the records of the case and to issue a Rule upon the District Magistrate of Howrah

and upon the opposite parties to show cause why the aforesaid case should not be transferred to some other competent Magistrate within the District and to pass such other or further orders as to your Lordships may seem fit and proper and pending the hearing of this application further proceedings may be stayed

And your petitioner as in duty bound shall ever pray

Affidavit

I Bholanath Chaudhari son of Late Babu Promatha Chaudhari by occupation landholder & merchant resident of 13 Dr Rajendra Road do hereby solemnly affirm and say as follows —

1 That I am the petitioner and as such I am fully conversant with all the facts of the case

2 That the facts stated in the above petition are true to my knowledge

Prepared in my office
Signature

Vakil

Solemnly affirmed this the 29th day of September 1929 before me

Sd M S Abder Rab
Commissioner

Petition of Appeal of the accused received from jail.

From Dina Bandhu Dutta alias Thakur who was sentenced on the 4th September 1929 to death under section 302 I P C by the Addl Sessions Judge, 24 Parganas Alipore

Sheweth that your humble appellant is quite innocent in this case

That your poor appellant knows nothing about the charge of murder brought against him About a year ago he kept a hotel One woman Rajabala by name used to serve in his hotel as a maid servant and she would do prostitution outside.

That about 5 or 6 months ago as the appellant incurred a loss he had to abolish the hotel and start working as a cook

That the aforesaid Rajbala used to come to the appellant and abuse him and even she would come to the place where the appellant worked and shower abuses on him and put a claim for her arrear pay That after a few days the poor appellant gave up that job and started a small chop shop That Rajbala used to come to that shop and quarrel with the appellant as known to the people residing near by

That the humble appellant is innocent and knows nothing about the fact who was murdered by whom in Rajabala's house. That as Rajabala had grudge against the appellant she brought this charge against him

That the very day the murder was committed the Police went to the appellant's shop at 12 P M but as he was asleep they entered into his house and struck him with a lathi which caused a mark on his back After this they reported to the officer in charge of the thana that he got it when cutting a sind which is totally false

That when the Police arrested the appellant there was no blood stain on his body or cloth That the fact that after 15 or 16 days the police got his nails cut and the doctor stated in his evidence that there was blood stain in them was absolutely false

That the records of the case against the poor appellant may kindly be perused and prerogative of justice may be shown to him by acquitting him from this case and sparing his life

Left thumb impression of
Dina Bandhu Uriya (alias Thakur)
Attested by
Sd H C Mitter,
Deputy Jailor

Countersigned
Sd Illegible
Major I M S
Superintendent, Alipore Central Jail

Petition of appeal filed by an advocate
Dinabandhu Uriya (alias Thakur)
Appellant
Through
Hiralal Ganguli, Advocate

IN THE COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL

Criminal Appellate Jurisdiction
Criminal Appeal No 609 of 1929
Dinabandhu Uria (alias Thakur) Accused, Appellant (in Jail)
Versus
King Emperor
Under Secs 302 and 326 I P C
Petition of Appeal

The appellant above named being aggrieved by the judgment and order of S N Modak Esq I C S, Additional Sessions Judge of Alipur, dated 4th September 1929, convicting the appellant aforesaid in Jury trial No 10 of July Sessions for 1929 under sections 302 and 326 I P C and sentencing him to 4 years' R I to run so long as the sentence of death is confirmed by

this Hon'ble Court, is not executed, begs to prefer this petition of appeal to the Hon'ble Court on the following amongst other

Grounds

I. For that having regard to the evidence on record and the facts and circumstances of the case the conviction of the accused under Sections 302 and 326 is bad and unsustainable

II For that the conviction and sentence of the accused is bad in law as well as on facts

III For that the learned Additional Sessions Judge was wrong in not explaining to the Jury the exceptions in section 300 I P C and in directing the Jury to the effect that the Jury need not consider any of the exceptions in the said section in the present case and the said omission and direction amounts to a material misdirection and the accused has been seriously prejudiced thereby

IV For that the learned Additional Sessions Judge was wrong in not drawing the attention of the Jury to the second part of Sec 304 I P C and in not explaining the same to the Jury with reference to the facts and circumstances of the case and the said omission amounts to a misdirection and has seriously prejudiced the accused

V *For that while dealing with the alleged motive for commission of* the present crime the learned Additional Sessions Judge was wrong in not explaining to the Jury the alleged previous circumstances from the point of view of the accused and the said omission has materially prejudiced the accused

VI For that the learned Additional Sessions Judge was wrong in not giving the jury any direction as to the exceptions in section 300 I P C having regard to the nature of the evidence and the facts and circumstances of the case

VII For that while dealing with the suggestion of alibi, and while directing the Jury that there was no evidence to prove the said suggestion of alibi the learned Additional Sessions Judge was wrong in not asking the Jury to draw adverse inference against the prosecution this point from non examination of Sindhu Bera as a prosecution witness although he was examined by P W 22 Sub Inspector Basanta Mukherji and was a material witness

VIII For that having regard to the discrepancies in material particulars among the P Ws the surrounding circumstances and probabilities of the case and the evidence on record the conviction of the accused under sections 302 and 326 I P C is unsustainable

IX For that having regard to the facts and circumstances of the case the sentence of death at any rate is too severe and is otherwi unsustainable

X For that the sentence passed upon the accused under s

and 326 I P C are too severe, having regard to the facts and circumstances of the case

And the appellant as in duty bound shall ever pray

List of papers—

This petition of appeal . 1

Vakalatnama . 1

The copy of heads of charge to the Jury and the verdict and sentence may be dispensed with, this appeal being against sentence of death

Sd Hiralal Ganguli
Advocate for the appellant

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL

CRIMINAL APPELLATE JURISDICTION.

In the matter of an application under section 419 Criminal Procedure Code

And

In the matter of Abdul Momin Petitioner Accused

Versus

The King Emperor

And

In the matter of an order of Mr T J Y Roxburgh, Chief Presidency Magistrate, Calcutta dated the 28th April 1930 convicting the petitioner under section 120B read with Section 117 and 147 I P C and sentencing him to undergo rigorous imprisonment for one year and under Section 117 read with Sections 143 and 147 I P C (but no separate sentence having been passed under the other sections) and an order to execute a bond of Rs 2 000/- with two securities of Rs 1 000/- each to keep the peace for 3 years, in default to suffer simple imprisonment for the same period

To

The Hon'ble Sir George Claus Rankin M A Kt Chief Justice and his Companion justices of this Hon ble Court

The humble petition of the above named appellant

Most Respectfully Sheweth —

1 That your petitioner along with others was put upon his trial before Mr T Roxburgh Chief Presidency Magistrate, Calcutta under section 120B I P C read with sections 117 143, 147 I P. C to wit conspiracy, to abet the commission of offence of rioting and causing the assault of public authorities

2 That the case of the Prosecution was as follows —

(*a*) That there were several meetings of the Carters' Union in Calcutta

(*i*) on 6th February 1930

(*ii*) on 16th February 1930

(*iii*) on the 23rd February 1930 and

(*iv*) 30th March 1930

that at the first meeting your petitioner only explained the utility of the said Union

(*b*) That at the other said meetings held in different parts of the town of Calcutta your petitioner made no speech but at the third meeting he only acted as Secretary and collected some subscriptions

(*c*) That pursuant to the resolutions passed at the meeting of the Carters Union Carters of Calcutta refused to pay fines on conviction in Criminal Courts and preferred to go to jail instead and on the 1st April last took out their carts on the streets and during midday unyoked the buffaloes from the said carts and blocked the parts of Harrison Road near its junction with Strand Road with the said carts causing a serious dislocation of traffic That on the police authorities trying to remove the obstructions from the said road there was a serious clash between the Police and the said carters, so much that the police had to open fire

3 That your petitioner pleaded not guilty to the aforesaid charges and his defence was that at the first said meeting he only explained the utility of the Union to formulate grievances and that at the third meeting he acted as Secretary and collected subscriptions from the carters and that beyond helping the Union with advice regarding the ways and means of redressing the said grievances he had no part in the rioting of the 1st April last That the aforesaid meetings were bonafide and also in the interest of the carters of Calcutta

4 That at the trial the Prosecution produced evidence in support of the charges framed against your petitioner but your petitioner submits that the only evidence so far as he is concerned brought on record by t Prosecution is to the effect that.

(a) at a meeting of the Carter's Union held on the 9th February 1930 your petitioner only explained the utility of the Union

(b) that at the third meeting he only acted as Secretary and collected subscriptions

5 That the learned Magistrate by his order dated the 28th April 1930 found your petitioner guilty under Section 117 read with Sections 143 and 147 I P C but passed no separate sentence but convicted your petitioner under Sections 120B read with Sections 117 and 147 I P C and sentenced him to undergo rigorous imprisonment for one year and to execute a bond of Rs 2 000/ with two securities of Rs 1 000/- each to keep the peace for 3 years in default to suffer simple imprisonment for the same period

6 That being aggrieved by the aforesaid order your petitioner begs to prefer this appeal in this Hon ble Court on the following amongst other

Grounds

I For that on the evidence on the record the elements necessary to constitute an offence under Section 120B read with sections 117 and 147 of the Indian Penal Code and an offence under Section 117 read with section 143 and 147 I P C have not been proved in the case

II For that the charges as framed are bad in law and the accused has been prejudiced at being tried on these charges

III For that the charges as drawn up in the case were vague and prolix and did not give the appellant a proper notice of what he had to meet

IV For that the common object charged of the alleged assembly did not constitute the said assembly unlawful within the meaning of Section 141 of the Indian Penal Code

V For that the learned Magistrate ought not to have placed any reliance upon the so-called reports Exhibits 5 2, 3 and 6

VI For that the circumstances under which the said reports were made demonstrated conclusively that they were not true and faithful reports of the speeches made at the meetings

VII For that the said reports being admitted based upon the recollection of the reporters who took no notes and who purported to jot down only such passages as they deemed to be important divorced from the context and the full text of the speeches not having been before the Court the conviction based on these reports is unwarranted and illegal

VIII For that the absence of any evidence to show or suggest that the petitioner made any speech instigating the carters to break the peace or do any unlawful act the convictions are unsustainable

IX For that the learned Magistrate is wrong in supposing that at any of the meetings at which the appellant was present he supported any action by the Carters leading to an offence under section 14 I P C

X For that the perusal of the entire reports of the meetings attended by the appellant makes it abundantly clear that no offence was committed by the appellant

XI For that the learned Magistrate has failed to notice that the conduct of the appellant after the rioting was incompatible with the allegation that he was a member of the conspiracy as charged

XII For that the learned Magistrate is wrong in holding that there was any conspiracy or inflammatory statements by the appellant in fact there is no evidence on the record to support that statement

XIII For that there is no evidence on the record to prove that the appellant at any time insisted the movement to cause obstruction to the Public Streets or that he entered into any conspiracy to do the same

XIV For that no foundation having been laid in the evidence for holding that there was any conspiracy between the different accused persons the learned Magistrate has erred in law in admitting in evidence against the appellant the words and actions of the other accused persons

XV For that the learned Magistrate is wrong in law as well as in fact in holding those who intentionally brought about the situation on the 1st April must be presumed to have intended that there should be these assaults on the Police'

XVI For that in the absence of any evidence to show that the accused at any time instigated or even anticipated the use of force by any member of the assembly the learned Magistrate is wrong in holding that the charge under Section 120B read with sections 117 and 147 I P C has been made out

XVII For that the learned Magistrate ought to have found that the appellant either instigated or combined with other persons to instigate the use of criminal force for the action of the Carters on the 1st April before he could convict him of the offence charged

XVIII For that the meeting per se being held publicly and openly for the redress of grievances in furtherance of the formation of a trade union and there being no finding as to the active suggestion or support or simulation by the appellant of the happenings of the 1st April conviction is bad in law

XIX For that at any rate the sentence is much too severe

XX For that the order under section 106 Cr P C is not warranted in the circumstances of the case

And your petitioner prays your Lordship may be pleased to call for the records of the case and admit this appeal and direct the petitioner to be released on bail pending the [illegible] of the appeal

And your petitioner as in duty bound shall ever pray

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL
CRIMINAL APPELLATE JURISDICTION.

In the matter of an application under section 419 Criminal Procedure Code

And

In the matter of Bankim Ch Mukherjee Accused Petitioner

Versus

The King Emperor

And

In the matter of an order of Mr T J Y Roxburgh Chief Presidency Magistrate Calcutta dated the 29th April 1930 convicting the petitioner under section 120B read with Sections 117 and 147 I P C and sentencing him to undergo rigorous imprisonment for one year and to execute a bond of Rs 2000 with two sureties of Rs 1000 each to keep the peace for 3 years in default to suffer simple imprisonment for the same period

To

The Hon ble Sir George Claus Rankin Kt Chief Justice and his companion Justices of this Hon ble Court

The humble petition of the appellant abovenamed most respectfully

SHEWETH

1 That your petitioner is the President of the carters Union a body formed for the protection of the interest of the carters and Chowdhurys plying their carts in the city of Calcutta

2 That your petitioner along with others was put on his trial before Mr T Roxburgh Chief Presidency Magistrate Calcutta under section 120B I P C read with Sections 117 and 143 and 147 I P C to wit conspiracy to abet the commission of offence of rioting and causing the assault of public authorities

3 That the case for the prosecution inter alia was as follows —

(a) That there were several meetings of the Carters Union in Calcutta viz (1) on the 9th February 1930 (2) On 16th February

1930, (3) On 23rd February 1930 and (4) On 30th March 1930 That the first meeting of the Union was presided over by your petitioner

(b) That at the said meetings which were held in different parts of the town of Calcutta many carters and Chowdhurys were present That in the first meeting your petitioner was appointed as Chairman of the Carters' Union and in thanking the meeting said that the Carters must hold meetings in different centres for propaganda

(c) That pursuant to the resolutions passed at these meeting of the Carters Union Carters of Calcutta refused to pay fines on conviction in Criminal Courts and elected to go to jail instead and on the 1st of April last took out their carts on the streets and during midday unyoked the buffaloes from the said carts and blocked the part of Harrison Road near its junction with Strand Road with the said carts causing a serious dislocation of traffic That on the police authorities trying to remove the obstructions from the said road there was a serious clash between the Police and the said carters and so much so that the Police had to open fire

4 That your petitioner pleaded not guilty to the aforesaid charges and his defence was that beyond presiding at one public meeting of the Carters held to discuss their grievances and beyond helping the Union with advice regarding the ways and means of redressing the said grievances he had no part in the rioting of the 1st April last That the aforesaid activities of your petitioner were bonafide public activities in the interest of the Carters of Calcutta

5 That at the trial the prosecution led evidence in support of the charges framed against your petitioner but your petitioner submits that the only evidence so far as he is concerned brought on record by the prosecution is to the effect that —

(a) at a meeting of the Carters Union held on the 9th February 1930 your petitioner was appointed as the Chairman of the newly formed Carters' Union

(b) that your petitioner was present at the said meeting and made a speach asking the carters to hold meetings in differant parts of the town for propaganda

(c) that your petitioner was on one occasion present at the Bankshall Police Court when the cases instituted by C S P C A against the carters were going on

6 That the learned Magistrate Mr Roxburgh however, by his order dated the 29th April 1930 found your petitioner not guilty under section 117 read with Section 147 I P C and acquitted him of the charge but convicted your petitioner of the offence under section 1-

with Sections 117 and 147 I P C and sentenced him to undergo rigorous imprisonment for one year and to execute a bond of Rs 2000 with two sureties of Rs 1000 each to keep the peace for 3 years in default to suffer simple imprisonment for the same period

7 That being aggrieved by the aforesaid order your petitioner begs to prefer this appeal in this Hon ble Court on the following amongst other

Grounds

1 For that on the evidence on the record the elements necessary to constitute an offence under section 120B read with sections 117 and 147 of the Indian Penal Code have not been proved in the case

2 For that the charges as framed are bad in law and the accused has been prejudiced at being tried on these charges

3 For that the charges as drawn up in the case were vague and prolix and did not give the appellant a proper notice of what he had to meet

4 For that the common object charged of the alleged assembly did not constitute the said assembly unlawful within the meaning of section 141 of the Indian Penal Code

5 For that the learned Magistrate ought not to have placed any reliance upon the so called reports Exhibits 1, 2, 3 5 and 6

6 For that the circumstances under which the said report were made demonstrated conclusively that they were not true and faithful reports of the speeches made at the meetings

7 For that the said reports being admittedly based upon the recollection of the reporters, who took no notes and who purported to jot down only *such passages as they deemed to be important divorced from the contest* and the full text of the speeches not having been before the court the conviction based on these reports is unwarranted and illegal

8. That in the absence of any evidence to show or suggest that the petitioner made speeches instigating the Carters to break the peace or do any unlawful act the convictions are unsustainable

9 For that the learned Magistrate is wrong in supposing that any of the meetings at which the appellant was present he supported any action by the carters leading to an offence under section 147 I P C

10 For that the perusal of the entire reports of the meetings attended by the appellant makes it abundantly clear that no offence was committed by the appellant

11 For that the learned Magistrate has failed to notice that the conduct of the appellant after the rioting was incompatible with the allegation that he was a member of the conspiracy as charged

12 For that the learned Magistrate is wrong in holding that there was [illegible] conspiracy or inflamatory statements by the appellant, in fact there is [illegible] nce on the record to support that statement

13 For that there is no evidence on the record to prove that the appellant at any time insisted the movement to cause obstruction to the public Streets or that he entered into any conspiracy to do the same

14 For that no foundation having been laid in the evidence for holding that there was any conspiracy between the different accused persons the learned Magistrate has erred in law in admitting in evidence against the appellant the words and actions of the other accused persons

15 For that the learned Magistrate is wrong in law as well as in fact in holding those who intentionally brought about the situation on the 1st April must be presumed to have intended that there should be these assaults on the police

16 For that in the absence of any evidence to show that the accused at any time instigated or even anticipated the use of force by any member of the assembly the learned Magistrate is wrong in holding that the charge under section 120B read with Sections 117 and 147 I P C has been made out

17 For that the learned Magistrate ought to have found that the appellant either instigated or combined with other persons to instigate the use of criminal force for the action of the Carters on the 1st April before he could convict him of the offences charged

18 For that the meeting per being held publicly and openly for the redress of grievances in furtherance of the formation of a trade union and there being no finding as to the active suggestion or support or stimulation by the appellant of the happenings of the 1st April the conviction is bad in law

19 For that at any rate the sentence is much too severe

20 For that the order under section 106 Cr P C is not warranted in the circumstances of the case

And your petitioner prays your Lordships may be pleased to call for the records of the case and admit this appeal and direct the petitioner to be released on bail pending the hearing of the appeal

And your petitioner as in duty bound shall ever pray

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL

CRIMINAL REVISIONAL JURISDICTION

IN THE MATTER OF APPLICATION Under Section 439 of the Code of Criminal Procedure and

IN THE MATTER OF LADHU RAM SONAR
Accused Petitioner
Versus
KALURAM AGARWALLA.
Complt. Opposite party

To

The Hon'ble Sir George Claus Rankin Kt Chief Justice and His Companion Justices of the said Hon'ble Court.

The humble petition of the above-named petitioner most respectfully

Sheweth —

1 That your petitioner has been convicted by Mr H K De Fourth Presidency Magistrate Calcutta under section 106 of the Indian Penal Code and sentenced to pay a fine of Rs 200/- in default two months rigorous imprisonment and the fine if paid will be paid to complainant as compensation

2 That the accused belongs to Joypore within the Native States and he was brought down to Calcutta under an extradition warrant on the allegation that the complainant Kaluram Agarwalla entrusted the accused with 3½ Bhurris and 7½ annas Weight of gold on one day and a further quantity of three bhurris and twelve annas on a subsequent day for preparing ornaments on account of his marriage

3 That on the twenty fifth day of January 1930 complainant filed the petition before the Additional Chief Presidency Magistrate for process against the accused, whereupon the learned Magistrate examined the complainant and ordered D town police to enquire and report by the 10th of February 1930

4 That on the 7th of February 1930 the Police made a report saying that the accused could not be found

5 That on the tenth day of February one thousand nine hundred and thirty the case was adjourned to the twenty seventh day of February 1930 and on the latter date the complainant was absent and the petition of complaint was dismissed under section 203 of the Criminal Procedure Code

6. That on the first day of March 1930 the complaint was revived and the case was adjourned to the seventh day of March 1930 on which date certain witnesses were examined before the Additional Chief Presidency Magistrate and the case was adjourned to the twenty fourth day of March one thousand nine hundred and thirty On the 24th March the case was again adjourned to the first April 1930 and on the first of April 1930 a Warrant was issued against the accused under section 106 I P C making it returnable on the sixteenth day of April one thousand nine hundred thirty

7 That on the third day of April 1930 although that was not the date fixed for the next hearing of the case the following order —

> Rai Haridhone Dutta Bahadur to kindly record the evidence and report as to issue of the extradition Warrant'

8 That thereafter certain evidence was recorded by Rai Bahadur Haridhone Dutt Honorary Magistrate Calcutta and on the tenth day of April one thousand nine hundred and thirty the said learned Honorary Presidency Magistrate recorded the following order —

> Three more witnesses examined extradition against Ladhuram Soner only recommended Put up before the Additional Chief Presidency Magistrate

Etc Etc Etc

In the Court of the Sessions Judge Assam Valley Districts

(Criminal Appeal)

King Emperor Vs —1 Sewlochan Sing
2 Sew Ratan Sing—Appellants
3 Sraban Sing
(Nos I & 2 convicted under S 147 I P C and sentenced to 3 months rig Imp and a fine of Rs 50 and No 3 sentenced to undergo rig Imp for 4 months and to a fine of Rs 50/ under section 147 325 I P C)

The humble appellants abovenamed beg to prefer this appeal against the decision of Babu P N Das E A C and First Class Magistrate sentencing them as above on the following amongst other

Grounds

1 For that the learned Magistrate after finding in his Judgment that the Serang and his men first assaulted Sameswar which led to a mutual fight between the parties on the steamer erred in fact in not holding that the fight with brick bats and pellets was continuation of the first started by the khalasis and that they were the aggressors

2 For that the learned Magistrate erred in law in laying down the principle and acting upon the same in that if two witnesses identified the accused he was found guilty of rioting

3 For that the lower court erred in not taking into consideration the evidence of Mr Currie when he stated on oath that the coolies were barehanded whereas the Khalasis had iron bars and also that when the coolies were going towards the bank the Khalasis were throwing pellets from the bows of the steamer

4 For that the learned Magistrate ought to have held after fin that the Khalasis were the aggressors that some sort of defensive

was necessary on the part of the coolies to stop the Khalasis from throwing missiles at them and if some of them threw missiles in defence to cover their retreat of the rest they did not exceed the right of Private defence

5 For that regarding Appellant No 1 Sew Lochan there were the evidence of only two witnesses viz P Ws 9 & 10, but the learned Magistrate committed a great error in not directing his attention towards the statement of witness No 9 Mofizal Khan before the identifying Magistrate wherein he clearly stated that Sew Lochan did not take any part in the row

6 *For that witness No 10 Fazlur Rahman also did not state in the* identification parade that Sew Lochan threw stones

7 For that prosecution witnesses were examined in two batches and it was only the witnesses of the last batch examined on 13 11 26 (P Ws 9 & 10) incriminated appellant No 1

8 For that the learned Magistrate *held your humble appellant* Sriban Sing guilty mainly relying on the testimony of witnessess Nos 8 & 11 without considering the fact that these two witnesses were not presented at the identification parade and no satisfactory explanation had been given for this important omission and the learned Magistrate ought not to have found him guilty without sufficient corroboration from other sources

9 For that the above two witnesses were witnesses examined in the second batch and as such their testimony ought to have been taken with great caution

10 For that regarding No 2 viz Sew Ratan Sing the learned Magistrate relied on the evidence of only Motiur Rahman and Mr Havelock ignoring the fact that the former contradicted himself in his cross examination and the latter was not present at the time of the throwing of the missiles

11 For that in view of the fact that the other witness P W 2 Mr C C Havelock on whom the Magistrate has relied for convicting your humble appellant Sewratan was not named in the charge sheet and the fact that no other witness examined in court referred to him as being present at the time of occurrence read with the definite statement of P W 1 Mr R A Currie who said that Mr Havelock came when all was quiet and of P W 9 who said that Mr Havelock came when the steamer was in the mid stream for 10 or 15 minutes the learned Magistrate should not have placed any reliance on his testimony as being uncontrovertible or safe

12 For that considering the fact that the trouble was started by the Khalasis in a cowardly way i e by first assaulting the coolies getting them inside their steamer the learned Magistrate should not have taken such a serious view of the second part of the occurrence inspite of the [illegible] accident of having one man s leg injured in the affray

13 For that the learned Magistrate failed to take into consideration the fact that the witnesses who identified the present appellants saw them only for a second or two while in the alleged act of throwing stones amongst nearly 100 men and their identification could not be infallible without proper corroboration from reliable and independent sources.

14 For that under the circumstances the sentences are very severe

Under the above circumstances the humble appellants pray that the appeal may be admitted that the same may be heard after calling for the record and that the humble appellants may be released on bail For which act of kindness as in duty bound the appellants shall ever pray

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(ASSAMESE)

In the Court of the extra Assistant Commissioner of Dibrugarh

Copy of petition dated 4 10-26 field by Hen Ahum in case No 1146 C 26

জিলা লক্ষিমপুৰ মো ডিব্ৰুগড় ফৌজদাৰী আদালত। ইতি ৬।১০।২৬

ফৈঃ নাম	আসামী	ধাৰা	তা	সাক্ষী
শ্ৰীহেন আহম নিং চাংহুবালি গাও মৌজা জয়পুৰ	১। শ্ৰীগোপী আহম ২। „ তামুলি „ ৩। „ মংলু „ ৪। „ একণ „ নিং ঐ	দঃ বিঃ ৩২৪ ৪৪৭ ধাৰা	৯/২৬	১। শ্ৰীস্বৰ্গ ২। কণিয়া নগৰি ৩। উদা আলী গয়ৰহ

ধৰ্ম্মাবতাৰ।

১নং আসামীৰ মাটি ফৈৰাদীৰ ঘৰৰ সন্মুখত আছে, অকুৰ দিনা ফৈৰাদীৰ পিতৃক ইঞ্জিনিয়াৰ মহ বোই গধূলি ঘৰলৈ উক্ত আসামীৰ মাটিৰে দি ঘৰৰ আগদিয়ে না আসামীৰ পিতৃক কুৎসিত গালি দিয়াত ফৈৰাদিয়েও কিয় গালি দিছ বুলি কোৱাত সি ১।২ নং আসামিক শিয়ৰ কৰি কয় যে, মোক গালি পাৰিছ বুলি এই কথা কোৱাত ২নং আসামীয় হৰন্ত মাৰিব বুলি

কোবাত তেতিয়া ২, ৩, ৪ নং আসামি হতে আহি অনধিকাৰ প্ৰবেশ ক্ৰমে মোক নাদর পাবাৰ পৰা থেদা মাৰি নি ২নং আসামিয়ে আগ ভেটি দুৱাৰ মুখতে এমাৰ মাৰে তাৰ পাছত ১নং আসামিয়ে মাৰে তেনেতে ৩নং আসামিয়ে দাহেৰে মোৰ কপালত একুৱ মাৰে হাতৰ বুড়া আঙুলি দাহেৰে আঙুলি ভাঙ্গে, তাৰ পাছত ৪নং আসামিয়ে ভৰিত একেবে মাৰে, তেতিয়া মানুহে এবোৰাই দিয়ে পুলিশত আছি চিঁয়াইলগা গৈ খবৰ দিয়াত পুলিশে ফৈৰাদিক হাসপতালত পঠাবে, ২৭।৯।২৬ অৱধিলৈকে হাসপতালত আছিলো। এতিয়ালৈকে পুলিশে মোকৰ্দমা চালান লিদিয়াত প্ৰাৰ্থনা যে, পুলিশৰ কাগজ আদি তলব আনি বিচাৰ কৰি আসামী হেতক দণ্ড বিধানৰ আজ্ঞা হয়।

লেখক—
Sd/- মদন।

(HINDI)

মুদৰ্ই	মুদালৈহ	দফা—
হুড: কা: মানবীর গুরুং	বাবু জুরীমল মারবারী १	আমলগা
খরসান টৌন	বাবু নর্ম নরাইন প্রধান	বাহার্মী
	খরসান বাজার	মারপীঠ

करना ८ बजे
रात २४।११।२८

जनाब आली—रिपोर्टसे अरज करता हुं उपर लिखा मुदालैह दोनो आदमो हिलकार्ट रोड तारापुर कम्पनी दोकानके सामने मारपीट घुसा घुस्सी लड़ाई करता था हम जाके छुटा दिया तैसे नम नारायेन प्रधान भागके थानाके तरफ चला गीया वो जुरीमल मारवारी अपना घरमें जाके पिसतोल लिकर आया तो नंग नाराईन प्रधानको मारेगा वो हमसे मारेगा बोलके आनेसे जुरीमल मारवारी को समझाया वो पीसतोल देखनेसे काडतोस नही था वास्ते रीपोटसे अरज करता हुं उचीत करवाई करनेको हुजुरमें मरजी होवे अरज किया हुवि।

सही है: मानबीर गुरुंग २५।११।२८

गवाई—मानबाहादुर छत्री चौकीदार
खरसाण रेलवे इष्टेसन (१)
का नरबाहादुर थापा (२)
का जमन बाहादर थापा (३) खरसान टौन

(BENGALEE)

বাদী	আসামী	সাক্ষী
শ্রীসেখ জেসিমদ্দীন মির্দ্দে	১। রহিমবক্স মির্দ্দে	১। সমজত আলী মির্দ্দে
সাং বাবুড়দহ	২। করিমবক্স মির্দ্দে	২। খোদাবক্স মির্দ্দে
থানা বাগনাণ	৩। আবদুল মালেক	৩। হরসাদ আলী মির্দ্দে
	৪। বেকিরদ্দীন মির্দ্দে	সাং বাবুড়দহ
	৫। আবদুলখালেক মির্দ্দে	৪। গোলাম পাঞ্জা
	৬। আবদুল আজিজ মির্দ্দে	৫। এনাই বক্স সেখ
	সাং বাবুড়দহ	সাং রানা
	৭। নোসিরদ্দীন মির্দ্দে	৬। হেনাদ্দীন আকণ
	৮। আবদুলগোফুর মির্দ্দে	সাং পাইকপাড়া
মোকদ্দমা ৪৭ ৩২৫ / ৩২৩ ৫০৪ ধারা	৯। সেখ খালী বক্স	৭। রেয়াসতুল্লা
	সাং রানা	৮। হেমিদেলহক মির্দ্দে
		৯। তপজাল হোসেন মির্দ্দে
	ইহা ছাড়া আরও	১০। গোলামরহমাণ মির্দ্দে
	১০ জন লাঠিয়াল ছিল	১১। ভূষণ সামন্ত

বিবরণ এই যে গত কল্য ইং রাজি ৮ই ফেব্রুয়ারি বাংলা ২৬ মাঘ বুধবার সাং বাবুড়দহ সকাল বেলা আন্দাজ ৬০ টার সময় আসামীগণ থানা বাগনাণ অবৈধ জনতায় মিলিত হইয়া কেহ কেহ লাঠি কেহ কেহ কোদাল হস্তে আমাদের সর্ব্বসাধারণের ফকির খানার জায়গায় আসিয়া আমাকে কুৎসিত ভাষায় গালীগালাজ করত ৭ন আসামীর হুকুম নং আসামী লাটির দ্বারা আমার ডান হাতে মারিয়া হাত ভাঙ্গিয়া দিয়া গুরুতর জখম করিয়াছে ২নং আসামী লাটির দ্বারায় আমার মাথায় ৩ন আসামী লাটির দ্বারা আমার বাম হাতের কনুয়ের উপর ৪নং আসামী লাটির দ্বারা আমার পৃষ্ঠে ৫নং আসামী লাটির দ্বারায় আমার বাম পায়ে মারিয়া গুরুতর জখম ও রক্তপাত করিয়াছে। ১নং সাক্ষী আমার ভাইপো বিধায় ছাড়াইতে যাওয়ায় ৬নং আসামী লাটির দ্বারায় তাহার বাম হাতের কনুইয়ের উপরে ৮নং আসামী লাটির দ্বারায় তাহার বাম হাতে ও ৯নং আসামী লাটির দ্বারায় তাহার বাম কোতাড়ে মারিয়া গুরুতর জখম করিয়াছে আমাদের জখম বাগনাণ সরকারী হাসপাতালের ডাক্তার বাবুর দ্বারায় পরীক্ষা করাইয়া যে সার্টিফিকেট পাইয়াছি তাহা অত্রসহ দাখিল করিলাম গত কল্য আমার জখমের দরুণ দর দস্তুর হুজুর নালিশ করিতে পারি নাই। অত্যাচারের কারণ এই যে আসামীগণ পরিহার নিকট আত্মীয় ও বাধ্য বশীভূত লোক হইতেছে ঘটনার বহুপূর্ব্ব হইতে উক্ত জায়গার উপর আমাদের সাধারণের একটী ফকিরখানা ছিল উক্ত ফকিরখানায় ঘর তৈয়ারী করিবার জন্য অদ্য ২।২৫ দিন হইতে চেষ্টা করিতেছিলাম ঘটনার সময় আসামীগণ বাধা দিয়া আসিয়া জবর

চুপাইয়া দিবার চেষ্টা করায় আমি আপত্তি করিলে সকল আসামীগণ পরস্পর একবাক্যে উক্তরূপ অত্যাচার করিয়াছে। অতএব প্রার্থনা উক্ত ধারা-মতে আসামী সকলে বিচার করিতে আজ্ঞা হয়।

নিবেদন ইতি—৯।২।৩৩

বাদি ফেসিনদ্দীন নির্দ্দার ৯।২।৩ তারিখের পিটিশনের ও ঐ তারিখের ঐ মোকদ্দমা উঠাইয়া লওয়ার দরখাস্তের আদেশ নকল ও উঠাইয়া লইবার দরখাস্তের উপর ডেপুটী বাবুর ঐ তারিখের হুকুমের আদেশ নকল।

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